Community Examiners’ Evaluations of Competence to Stand Trial: Common Problems and Suggestions for Improvement

Jennifer L. Skeem and Stephen L. Golding
University of Utah

With the exponential growth of forensic psychology over recent decades, increasing numbers of clinical psychologists with little specialized training are becoming principal providers of forensic assessments. On the basis of results from an empirical study, the authors analyze 3 fundamental problems with these psychologists’ reports on competence to stand trial and provide recommendations for improvement based on legal, ethical, and professional standards of practice. The article focuses on the importance of (a) properly attending to the range of critical psycholegal abilities, including the defendant’s decisional capacities; (b) explaining the critical reasoning that underlies one’s psycholegal conclusions; and (c) using forensically relevant methods of assessment.

The field of forensic psychological assessment continues to grow exponentially and affect an increasing number of clinical psychologists. With the rise of managed care and its financial implications, Grisso (1996) expressed concern that psychologists with little specialized training may turn to forensic assessment for alternate sources of income, which “may have implications for the quality of court-ordered evaluation services in criminal cases” (p. 103). An appropriate domain in which to begin testing concern about the quality of evaluations completed by such “occasional experts” (Grisso, 1987) is that of competence to stand trial (CST). Given their frequency (e.g., Steadman, Monahan, Hartstone, Davis, & Robbins, 1982), CST evaluations are the form of forensic evaluations that psychologists are most likely to encounter. Moreover, examiners’ reports on CST are highly influential in a legal process that implicates critical legal rights and involves considerable financial costs (e.g., Skeem, Golding, Cohn, & Berg, in press; Winick, 1987, 1995). Studies have uniformly concluded that judges typically defer to the opinions of examiners, with rates of examiner–judge agreement often exceeding 90% (Hart & Hare, 1992; Reich & Toobey, 1986; Williams & Miller, 1981). Judges typically rely solely on examiners’ written reports (Melton, Petrla, Hoytress, & Slobogin, 1997; Roesch & Golding, 1980; Steadman, 1979), and, hence, the quality of the data and reasoning presented in such reports become a critical part of the CST adjudication process.

Despite the importance of CST assessments and reports, most jurisdictions neither set minimum standards for designating mental health professionals as forensic examiners nor provide examiners with systematic state-supported forensic training (Farkas, DeLeon, & Newman, 1997; Grisso, Cocozza, Steadman, Fisher, & Greer, 1994). For example, only 19% of states require that clinicians certify for forensic assessment by completing training, an examination, or a period of supervised experience, and only 9% more report that they offer or plan to offer training (Farkas et al., 1996). Moreover, state-supported training usually consists of minimalistic, 2-day workshops (Farkas et al., 1997). Thus, there is a large group of “occasional experts,” or “psychologists who supplement their general clinical practice with occasional forensic assessments” and “enter into forensic assessment with little or no specialized forensic knowledge” (Grisso, 1987, p. 833).

Virtually all published studies on CST assessments have used clinicians who are either (a) specifically trained to use CST assessment instruments, (b) inpatient forensic facility staff, or (c) community examiners with extensive forensic training (see Grisso, 1992; Skeem et al., in press). Few studies have investigated CST assessments in the most representative ecological context involving community-based occasional experts with little systematic forensic training. The empirical study on which this article is based (Skeem et al., in press) investigated the nature and quality of CST assessments completed in this real-world context.

This article presents that study’s implications for professional psychologists by analyzing three central problems revealed with examiners’ CST reports and providing suggestions for improvement based on legal, ethical, and professional standards (American Psychological Association, 1992; Borum & Grisso, 1996;...
Committee on Ethical Guidelines for Forensic Psychologists, 1991; Golding, 1993; Grisso, 1986, 1988; Heilbrun, 1992; Melton et al., 1997; Melton et al., 1997; Melton, Weithorn, & Slobogin, 1985). These central problems are as follows: (a) failure to adequately address fundamental CST abilities, including defendants' decisional competence (see Bonnie, 1992); (b) failure to present the critical reasoning underlying one's psycholegal conclusions; and (c) failure to use forensically relevant methods of assessment.

In this article, we outline the method of our empirical study, briefly discuss our rationale for focusing on psycholegal abilities, then analyze these three central problems and provide suggestions for improvement. Although this article discusses key issues to consider while conducting CST assessments and communicating their results, it does not explain how to conduct these assessments or write reports for the court. The information provided here is intended to supplement forensic training and basic instruction in criminal law and psycholegal assessment (e.g., Bonnie, 1992; Grisso, 1988, 1992; Melton et al., 1997).

The Nature of the Report Evaluation Study

In the report evaluation study (Skeem et al., in press), 100 CST evaluations referencing 50 defendants were randomly selected on the basis of orders filed with Utah's Third District Court. These evaluations were completed by clinicians employed in the community: 80% percent were completed by PhD-level psychologists, 14% by psychiatrists, and 6% by social workers. A total of 18 examiners, 62% of all those who were state-approved, were represented in the report sample. All examiners had undergone minimal state-supported training, but only two examiners held diplomate status with the American Boards of Forensic Psychology or Psychiatry.

Two experienced forensic psychologists and Jennifer L. Skeem coded these reports, with good to excellent rates of interrater reliability (Skeem et al., in press), using a comprehensive CST report coding manual. We designed this manual, with the help of nationally known experts, to distill critiques and standards regarding CST assessment and report quality. The manual codes the logic and structure of examiners' reports with respect to each report's (a) description and substantiation of the defendant's CST abilities; (b) description and substantiation of the defendant's psychopathology; (c) provision of data and reasoning for psycholegal conclusions, particularly describing any links between CST deficits and symptoms of psychopathology; and (d) corroboration of opinions with third-party sources of information and forensically relevant assessment instrument data. After we explain the rationale for focusing on psycholegal abilities in CST assessment, we note the results of this study below as relevant in their implications for professional psychologists.

The Context for CST Evaluations: Focusing on Forensically Relevant Psycholegal Abilities

Why Focus on Psycholegal Abilities?

The standard for CST in all jurisdictions is a variant of the federal Dusky standard, which defines a defendant as incompetent if, because of mental illness or defect, he does not possess "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him" (Dusky v. United States, 1960, p. 171). Thus, the fundamental task for a forensic examiner is to relate any psychopathological or cognitive difficulties to possible impairments in the defendant's psycholegal abilities. Unlike traditional clinical evaluations, the existence of psychopathology is merely a starting point for CST assessments.

Forensic experts, commentators, and judicial authorities agree that examiners should assess and report on the defendant's specific psycholegal abilities and impairments (Borum & Grisso, 1996; Golding, 1993; Grisso, 1986, 1988; Melton et al., 1997; Miller & Germain, 1986; Weiter v. Settle, 1961). This recommendation is based on two principles. First, CST is a multidimensional construct (Bonnie, 1992; Roesch & Golding, 1980). As explained below, defendants are seldom globally impaired or equally functional across all competence domains. Depending on the context of the defendant's case, the specific abilities that are impaired or spared may substantially alter conclusions about the defendant's competence. For example, a defendant with an impaired ability to testify may nevertheless be adjudicated competent if she intends to waive her right to a trial and plead guilty based on a rational decision-making process.

Second, the final determination of CST is a legal matter. There is continuing debate about whether examiners should only provide data and knowledge to inform the court about the relationship between defendants' psychological characteristics and legally relevant capacities or go further to issue an opinion on the ultimate legal issue (see Golding, 1990). Without taking sides in this debate, we note that providing an opinion is the least important part of one's role as examiner. The most critical function involves advising the court about the defendant's specific abilities and deficits and explaining one's reasoned inferences about the bases for those deficits (see Carter v. United States, 1957, p. 617). An expert's opinion on the ultimate issue

1 Although a majority of the evaluations were performed by 5 examiners, the reports completed by these examiners did not differ from those provided by the remaining 13 examiners. That is, the frequencies with which (a) CST abilities were addressed, (b) reasoning was provided to link psychopathology with CST deficits, and (c) defendants were deemed incompetent did not differ between samples. There were also no differences in global ratings of report quality (Skeem et al., in press).

2 This training consisted of two brief workshops, which included a total of 8 hours of training on CST legal standards and evaluation. Half of the reports were drawn from a period preceding these workshops, and half were drawn from a period following the workshops. There were no significant differences between these groups in the number of CST abilities addressed, substantiation of CST deficits, or global ratings of quality (Skeem et al., in press).

3 Mean estimates of reliability across various sets of variables ranged from good to excellent, on the basis of Cicchetti and Sparrow's (1981) kappa classifications. For example, pairs of coders had excellent rates of agreement on the CST domains presented in Table 1 (M kappa across domains = .93, SD = .12).

4 The coding manual is available from Jennifer L. Skeem on request. More detailed analyses and additional data are also available on request.
“rises no higher than the reasons on which it is based” (United States v. Horowitz, 1973, p. 777).

Which Psycholegal Abilities Should Be Assessed?

Since the formulation of the Dusky standard, substantial attention has been devoted to understanding the particular psycholegal abilities that it encompasses. Several professional, legislative, and judicial organizations have created lists of functional psycholegal abilities that must be addressed in determining a defendant’s competence (see Grisso, 1986, 1988; Florida Rules of Criminal Procedure, §3.211, 1991; Utah Code Annotated §77-15-5.4, 1994; Weiser v. Settle, 1961). Given the numerous sets of abilities that have been formulated, examiners could assess defendants’ CST in a variety of ways, ideally depending on those issues most relevant to the defendant’s case. Thus, to adequately represent examiners’ operationalization of CST, our study assessed whether reports described the defendant’s abilities or deficits with respect to 11 global domains and 31 nested subdomains (see Table 1). These domains are based on psycholegal abilities included in modern CST assessment manuals and instruments (Golding, 1993; Grisso, 1988) and “have value in that they delineate areas of inquiry for the evaluator” (Bennet, 1985, p. 377). The domains provided the foundation for determining whether reports described the defendant’s abilities or deficits with respect to these domains.

Table 1
CST Ability Domains and Subdomains

<table>
<thead>
<tr>
<th>Domain</th>
<th>Subdomain</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Capacity to comprehend and appreciate the charges or allegations</td>
<td>a. Factual knowledge of the charges (ability to report charge label)</td>
</tr>
<tr>
<td>2. Capacity to disclose to counsel pertinent facts, events, and states of mind</td>
<td>b. Understanding of the behaviors to which the charges refer</td>
</tr>
<tr>
<td>3. Capacity to comprehend and appreciate the range and nature of potential penalties that may be imposed in the proceedings</td>
<td>c. Comprehension of the police version of events</td>
</tr>
<tr>
<td>4. Basic knowledge of legal strategies and options</td>
<td>a. Ability to provide a reasonable account of one’s behavior around the time of the alleged offense</td>
</tr>
<tr>
<td>5. Capacity to engage in reasoned choice of legal strategies and options</td>
<td>b. Ability to provide information about one’s state of mind around the time of the alleged offense</td>
</tr>
<tr>
<td>6. Capacity to understand the adversary nature of the proceedings</td>
<td>c. Ability to provide an account of the behavior of relevant others around the time of the alleged offense</td>
</tr>
<tr>
<td>7. Capacity to manifest appropriate courtroom behavior</td>
<td>d. Ability to provide an account of police behavior</td>
</tr>
<tr>
<td>8. Capacity to participate in trial</td>
<td>e. Comprehension of the Miranda warning</td>
</tr>
<tr>
<td>9. Capacity to testify relevantly</td>
<td>f. Confession behavior (influence of mental disorder, suggestibility, and so forth on confession)</td>
</tr>
<tr>
<td>10. Relationship with counsel</td>
<td>a. Knowledge of penalties that could be imposed (e.g., knowledge of the relevant sentence label associated with the charge, such as “5 to life”)</td>
</tr>
<tr>
<td>11. Medication effects on CST</td>
<td>b. Comprehension of the seriousness of charges and potential sentences</td>
</tr>
<tr>
<td></td>
<td>a. Ability to provide a reasonable account of one’s behavior around the time of the alleged offense</td>
</tr>
<tr>
<td></td>
<td>b. Ability to provide information about one’s state of mind around the time of the alleged offense</td>
</tr>
<tr>
<td></td>
<td>c. Ability to provide an account of the behavior of relevant others around the time of the alleged offense</td>
</tr>
<tr>
<td></td>
<td>d. Ability to provide an account of police behavior</td>
</tr>
<tr>
<td></td>
<td>e. Comprehension of the Miranda warning</td>
</tr>
<tr>
<td></td>
<td>f. Confession behavior (influence of mental disorder, suggestibility, and so forth on confession)</td>
</tr>
<tr>
<td></td>
<td>a. Knowledge of penalties that could be imposed (e.g., knowledge of the relevant sentence label associated with the charge, such as “5 to life”)</td>
</tr>
<tr>
<td></td>
<td>b. Comprehension of the seriousness of charges and potential sentences</td>
</tr>
</tbody>
</table>

Note. CST = competency to stand trial.
addressing the three key points to be presented in the remainder of this article, including the importance of (a) properly attending to the range of critical psycholegal abilities, including the defendant’s decisional capacities; (b) explaining the reasoning that underlies one’s psycholegal conclusions; and (c) using forensically relevant methods of assessment. It is to the first of these points that we now turn.

Critical Issues to Consider in Completing and Communicating the Results of CST Evaluations

Addressing Key Psycholegal Abilities and Considering the Demands of the Case

Decisional versus foundational abilities. In early studies, examiners’ reports were criticized for addressing traditional diagnostic issues to the exclusion of legally relevant issues, including defendants’ psycholegal abilities (Geller & Lister, 1978; Hess & Thomas, 1963; Roesch & Golding, 1977; Vann, 1965). In keeping with recent findings (Heilbrun & Collins, 1995; Nicholson, LaFortune, Norwood, & Roach, 1995; cf Larkin & Collins, 1989), our study found that examiners’ reports have improved in the sense that reports virtually always address the forensically relevant issue of CST (Heilbrun & Collins, 1995; Nicholson et al., 1995). However, current reports routinely emphasize minimal competence abilities and pay relatively little attention to the higher-order decisional capacities that lie at the heart of the “rational” language of the Dusky standard (Nicholson et al., 1995; Skeem, 1996). For instance, 70% or more of reports addressed the defendant’s appreciation of the charges, potential penalties, and adversarial nature of the proceedings and the defendant’s capacity to disclose information to counsel (Skeem et al., in press). However, only 53% of the reports addressed the defendant’s basic knowledge of his or her legal options, and only 39% addressed the defendant’s capacity for reasoned choice among those options. Moreover, despite the fact that over 90% of defendants resolve their cases by means of plea bargains (Bonnie, 1992), only 12% of the reports addressed the defendant’s understanding of the implications of a guilty plea.

Because all defendants will be called on to select the “main theory of defense” or to competently waive the specific rights involved in pleading guilty, forensic experts argue that capacities relevant to these decisions should be routinely considered in assessing competence (Bonnie, 1992, p. 307; Borum & Grisso, 1996; Freckleton, 1995; Golding, 1993; Roesch & Golding, 1980; cf Winick, 1995). In addition to this pragmatic basis for assessing decisional competence, our legal system places a high value on autonomy and self-determination. Defendants are required by this system to make several fundamental decisions, particularly those involving the waiver of constitutional rights (Bonnie, 1992). In essence, “the client prerogatives to define the basic objectives of representation and to select the main theory of defense lie at the core of the idea that the client is the principal (and the attorney, the agent) in legal representation” (Bonnie, 1992, p. 307).

Decisional competence must also be assessed because individuals are often competent for one purpose but not another (Bonnie, 1992; Winick, 1995). As has been known for some time, psychopathology and mental retardation are heterogeneous and selective processes that affect some abilities in individuals while leaving others intact (see Appelbaum, 1994; Cichon, 1992). Research on competence to consent to treatment indicates that individuals’ foundational abilities (i.e., understanding treatment information) do not necessarily predict their status on related decisional abilities (e.g., thinking rationally about treatment; Grisso, Appelbaum, Mulvey, & Fletcher, 1995; see also Bonnie, 1992). Thus, foundational abilities are empirically distinct from decisional capacities.

The Supreme Court’s recent decision in Godinez v. Moran (1993) also highlights the importance of routinely assessing decisional as well as foundational capacities. Godinez involved a mentally disordered defendant who was found competent when he was represented by counsel but who subsequently decided to dismiss counsel, plead guilty, and prevent mitigating evidence from being presented at his death penalty hearing. Before Godinez, the appellate courts had been divided on whether the standard for waiving constitutional rights, including the right to counsel and the rights involved in pleading guilty, was higher than, or equivalent to, the Dusky standard (e.g., Steling v. Eyman, 1973; Westbrook v. Arizona, 1965; cf United States v. Hewitt, 1975). In Godinez, the Supreme Court ruled that the competence standard for waiving rights was the same as the Dusky standard. However, it left unanswered the question of whether a defendant found competent on the basis of an assessment of minimal psycholegal abilities can be assumed competent to make vital decisions even when decisional capacities were never assessed. Because Godinez left this question unanswered but equated the competence standards for waiving fundamental constitutional rights and for standing trial, examiners who do not assess defendants’ decisional capacities run the risk of having their reports understood as if they had. All defendants will face critical legal decisions during the resolution of their case (see Godinez v. Moran, 1993). Because they may be deemed competent to make these decisions if deemed competent to stand trial, it is absolutely critical that decisional capacities be addressed in CST assessments and reports.

Examiners may fail to address decisional abilities because these abilities are much more difficult to define and assess than foundational abilities. Hence, we will attempt to identify appropriate areas of inquiry and report for examiners on the basis of an elementary description of Bonnie’s (1992, 1993; building on Burt & Morris, 1972; Roesch & Golding, 1980; Winick, 1987) useful distinction between foundational and decisional competence. This distinction is reflected in a recently developed competence assessment instrument, and preliminary results from validation studies on the instrument appear promising (see Hoge et al., 1997). According to Bonnie’s theory, CST is understood as two separable constructs: a required foundational concept of competence to assist counsel and a contextualized concept of decisional competence. Foundational abilities are the minimal abilities defendants must possess to participate in their

3 Although a comparison of analyses of CST standards and procedures exceeds the scope of this article, the reader is strongly encouraged to consult those cited here.
defense (these abilities roughly correspond to CST Domains 1, 2, and 6 in Table 1). Decisional abilities tap the cognitive tasks of understanding and rationally choosing among legal alternatives without distortion caused by psychopathology (these abilities roughly correspond to CST Domains 4 and 5 in Table 1). The decisional construct is contextual in the sense that the content and rigor (i.e., demandingness) of the test for decisional competence is determined on the basis of the case context, including variables such as whether the defendant assents to or refuses the advice of counsel.

Although the content of the decisional construct is determined by the nature of the decisions that the defendant will face given the demands of his or her case, three general guidelines may be applied. First, as noted above, all defendants must choose a plea from among basic legal options and decide whether or not to plead guilty. Hence, defendants’ decision-making capacities with respect to these topics must be assessed routinely (Bonnie, 1992; Golding, 1993). Second, when defendants expect to waive any fundamental constitutional right, their capacities to do so competently should be evaluated (Bonnie, 1992; Golding, 1993; see also Boykin v. Alabama, 1969; Johnson v. Zerbst, 1938). These rights include the right to counsel and to a jury trial, the right to testify and to be present at trial, and the rights involved in pleading guilty (Bonnie, 1992). Third, when defendants are expected to confront decisions that strongly implicate their personal values and autonomy (e.g., deciding whether or not to raise the insanity defense), as opposed to decisions about strategy that may be relatively delegated to the attorney (e.g., deciding whether to waive a preliminary hearing), their capacities to rationally make these choices should be assessed (Bonnie, 1992).

However, the decisions that defendants may actually face can be difficult to predict. A defendant may change his or her mind about the case (as in Godinez), or the case circumstances themselves may change. Because rational decision making with respect to one domain (e.g., pleading guilty) may not generalize to another (e.g., proceeding pro se), it is important to communicate clearly which decisional domains were and were not actually assessed. For the decisional domains that are assessed, it is important to provide a thorough description of the defendant’s degree of decisional ability (see Bonnie, 1992).

The most critical assessment issue with respect to decisional competence is the extent to which a defendant’s psychopathology constrains or overly influences his or her choice among legal options. In addressing this assessment issue, it is important to avoid confusing the defendant’s reasoning process with his or her conclusion (Bonnie, 1992; Golding, 1993; Winick, 1995). In the interests of protecting defendants’ autonomy to make fundamental choices about their case on the basis of their personal values, our legal system honors even unwise decisions as long as those decisions are based on a rational assessment of legal options and their probable consequences (Faretta v. California, 1975; Farendak v. United States, 1979). Adapting Golding’s (1993) example, a defendant may choose to have a jury trial rather than plea bargain even when there is compelling evidence against him that suggests that he will serve a much longer sentence by doing so. The defendant’s choice, though unwise, must be honored if it is rational (e.g., if the defendant understands the considerable risks involved but wishes to exercise his right to defend himself because there is a slim chance that a jury will acquit him). However, the same choice reflects decisional incompetence if it is based on irrational thought processes. For instance, if a defendant reveals that he wishes to proceed to trial because he is confident that a jury will confirm that he was justified in murdering his victim because God commanded him to do so, this raises serious doubt about his decisional competence.

This example highlights one of the most problematic issues involved in assessing reasoned choice: distinguishing between overvalued ideas and delusions (Golding, Skeem, Roesch, & Zapf, in press; Walker, 1991). Although this issue exceeds the scope of this article, it is important that examiners determine the extent to which a set of odd beliefs reflects psychopathology or unusual values. This determination may be based on the cultural, political, and religious context of the defendant’s beliefs; the nature of symptoms (if any) that accompany the beliefs; and the defendant’s social and treatment history. Consideration of these issues is critical in “gray-area” cases where the presence of mental illness is questionable. Although legal choices based on symptoms of psychopathology suggest decisional incompetence, decisions that express unconventional values and beliefs are regularly honored by the courts (see Golding, 1993; Saks, 1991).

In conclusion, it is tempting to merely assess foundational abilities, such as whether the defendant knows the name of his or her charge. It is infinitely more difficult to define and assess rational decision making. Nevertheless, there are compelling pragmatic, legal, and empirical reasons for ensuring that a defendant’s reasoning with respect to his or her legal choices is clear. In a related sense, there are cogent bases for assessing whether a defendant’s competence is impaired by the effects of his or her medication.

Considering medication effects, including iatrogenic incompetence. Although most defendants in our study were medicated during their assessments, examiners rarely (18%) described assessing the impact of medication on defendants’ CST (Skeem et al., in press). In Riggins v. Nevada (1992), the Supreme Court held that due process may be violated if, absent a compelling state interest, a defendant is forced to stand trial while on antipsychotic drugs that may negatively affect his demeanor and ability to participate in proceedings. This opinion stems from concerns that psychotropic medication may (a) make the defendant appear inappropriately emotionally withdrawn and remorseless during proceedings, (b) alter consciousness and induce sedation or confusion such that the defendant is less involved in proceedings, and/or (c) alter material evidence about the defendant’s mental state such that insanity or psycho-
pathology cannot be observed by the trier of fact (Golding, 1993; Fentiman, 1986; Winick, 1977, 1993). Given these concerns, evaluators should routinely consider the effects of medication on competence (see Domain 11 in Table 1 for domains of inquiry).

Weighing the defendant's abilities against case demands. The fact that examiners often do not address critical case-relevant psychological abilities, including decisional competence and competence while on psychotropic medication, suggests that they fail to conceptualize competence as an open-textured, context-dependent construct (see Bonnie, 1992; Grisso, 1988; Roesch & Golding, 1980). Forensic experts often recommend that examiners (a) assess the psychological abilities that a defendant may require to resolve his or her particular case, then (b) weigh the defendant's level of ability against the likely demands of the case, considering variables such as the severity of the charges and quality of the defense attorney (see Freckleton, 1995; Grisso, 1988; Miller & Germain, 1986). However, in our study, examiners virtually never (12%) described assessing the congruence between the defendant's abilities and his or her case contexts (Skeem et al., in press). In fact, as will be shown, examiners more generally failed to describe the psychological reasoning underlying their conclusions.

Providing Psychological Reasoning to Support Conclusions

The trier of fact determines the weight to be assigned to an examiner's opinion by evaluating the strength and persuasiveness of the expert's analysis of the data (American Bar Association, 1986; Bazelon, 1975). When examiners fail to specify the reasoning underlying their conclusions, they preempt the trier of fact from arriving at an independent and informed opinion and thereby usurp the judicial decision-making role (see Bennett, 1985; Melton et al., 1997; Miller & Germain, 1986; Morse, 1978). Thus, it is essential that examiners specifically communicate their processes of data interpretation to the courts (Golding, 1993; Grisso, 1986; Melton et al., 1985; Nicholson et al., 1995). Moreover, psychologists have an ethical obligation to substantiate their conclusions in forensic reports by carefully documenting their factual bases (see American Psychological Association, 1992, §7.02; Committee on Ethical Guidelines for Forensic Psychologists, 1991, §7).

Early conceptual studies criticized examiners for issuing conclusory opinions in CST reports devoid of data-based explanations (Hess & Thomas, 1963; Roesch & Golding, 1977). More recent empirical studies (Nicholson et al., 1995; Skeem, 1996) suggest that there has been only modest improvement with respect to this issue. Nicholson and his colleagues (1995) found that only half of CST reports provided any example or rationale to support their conclusions about defendants' abilities or deficits. Our study more comprehensively analyzed the psychological reasoning expressed in CST reports.

The conclusions that examiners may reach in CST assessments can be organized into three categories: (a) the defendant's psychopathology, (b) the defendant's specific psychological abilities, and, most important, (c) the defendant's psychological impairments and the nature of the relationship, if any, between these impairments and symptoms of psychopathology. Our study indicated that, although examiners generally provide adequate reasoning to substantiate their clinical conclusions about defendants' psychopathology, they provide variable and poor substantiation for their more forensically relevant conclusions about defendants' CST abilities and CST impairments. To be specific, in over half (67%) of the reports, examiners presented multiple or most of the symptoms that substantiated their diagnosis of the defendant (Skeem et al., in press). In a similar manner, in over half (71%) of the reports, examiners provided specific examples of the symptoms they opined that defendants suffered (Skeem et al., in press). In contrast, of the reports that concluded defendants were competent to stand trial, 41% rarely, 28% sometimes, and only 31% often supported this assertion by substantiating the defendant's specific psychological abilities (Skeem et al., in press). These psychological abilities could be substantiated by documenting specific examples or defendant quotes that demonstrate a lack of defendant impairment. Most important, examiners provided even poorer substantiation for their conclusions about defendant's psychological impairments. It is to this issue that we now turn.

The critical issue referenced by legal standards for CST is the nexus between symptoms of psychopathology and deficits in competence. Thus, examiners must specifically assess and communicate their reasoning about the nature of the relationship between the defendant's psychopathology and his or her deficits in competence (Grisso, 1986, 1988; Golding, 1993; Melton et al., 1985, 1997; Nicholson & Kugler, 1991, Nicholson et al., 1995; Roesch & Golding, 1980). In addition to the cogent grounds for doing so explained above (e.g., the judge must be permitted to independently assess the strength of the examiner's opinion), this form of reasoning must be provided to rule out alternative explanations for psychological deficits that normally would not result in a determination that a defendant was incompetent. These include the possibility that the deficit is based on malingering, mere ignorance about legal procedures (which can be remedied via brief instruction); or transient states present during the examination, such as fatigue (see Drach, Berger, & Weinstein, 1987; Grisso, 1986). As Grisso (1986) noted, it is not enough that psychopathology and CST impairment(s) simply coexist: An examiner must specifically demonstrate that the CST impairment is caused by mental illness or retardation. Even defendants with mental disorders may demonstrate CST impairments that reflect variables such as malingering to a greater extent than their psychopathology.

The scale used in this study to assess examiners' reasoning with respect to this issue may be used to assist psychologists in conceptualizing, assessing, and documenting the relationship between CST impairments and psychopathology. This scale formed the core of the coding manual and was carefully developed in successive iterations based on expert commentary, expert feedback, and application to trial samples of reports. In the study, when an examiner described a defendant as impaired with respect to any of the psychological domains listed in Table 1,
Table 2
Codes Depicting the Extent of Relationship Described Between
CST Impairments and Symptomatology

<table>
<thead>
<tr>
<th>Relationship code (&amp; score)</th>
<th>Definition</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>None (0)</td>
<td>The CST domain is described as impaired, but there is no description of a relationship between the impairment and psychopathology.</td>
<td>&quot;The accused is unable to provide information to assist in his defense.&quot;  &quot;The defendant is unable to relate to her attorney.&quot;</td>
</tr>
<tr>
<td>Implied (0.5)</td>
<td>The author presents quotes from the defendant or examples that merely imply a link between the CST impairment and psychopathology.</td>
<td>&quot;When asked to describe his version of events about the alleged assault, the accused said he did not know what happened.&quot;  &quot;The defendant stated that the role of her attorney is 'a lot of persons on your property, the private-side-for my defense some friends and family' [sic].&quot;</td>
</tr>
<tr>
<td>Asserted (1)</td>
<td>The author attributes the CST impairment to psychopathology without specifically describing the relationship.</td>
<td>&quot;The accused has problems with memory that would preclude him from providing information to assist in his defense.&quot;  &quot;The defendant's ability to relate to her attorney will be compromised by her delusional thought processes&quot;</td>
</tr>
<tr>
<td>Substantiated (2)</td>
<td>The author specifies how the CST impairment is caused by psychopathology.</td>
<td>&quot;As noted, the accused has problems with memory and could not relate what he and others were doing at the time of the alleged crime. He may have difficulty providing information to his attorney to assist in his defense.&quot;  &quot;The defendant is committed to a delusional system that includes a belief that her attorney is receiving commands from God to ensure that she is punished. This delusion compromises her trust in and ability to relate to her attorney.&quot;</td>
</tr>
</tbody>
</table>

Note. CST = competency to stand trial.

Raters judged the degree of relationship specified by the examiner between that CST impairment and symptomatology, using the scale explained in Table 2. Using this scale, we found that examiners generally provided little data to support their conclusions about defendants' CST impairments. To be specific, when examiners noted CST impairments, they usually provided no description of a relationship between that impairment and symptoms of psychopathology ($M = 34\%, SD = 14$) or merely asserted ($M = 36\%, SD = 13$) or implied ($M = 19\%, SD = 7$) that there was a relationship (Skeem et al., in press). The reports very seldom substantiated ($M = 10\%, SD = 5$) that there was a relationship by providing data or reasoning that specifically described how a defendant's psychopathology compromised his or her CST abilities (Skeem et al., in press). Mere assertions that CST impairments are caused by psychopathology preclude the court from independently assessing the validity of such statements. Thus, it is critical that examiners assess and specifically substantiate any links between defendants' CST impairments and psychopathology. Examples of substantiated relationships, which distinguish them from less acceptable descriptions of CST impairment—psychopathology links, are provided in Table 2.

The links between CST impairments and psychopathology

---

The scale reflects "combinations of the following considerations: (a) the extent to which the examiner includes a specific statement that the defendant's CST impairment is based on psychopathology, (b) the extent to which the examiner provides specific data relevant to a link between the CST impairment and psychopathology, and (c) the extent to which the examiner specifically describes how the defendant's impairment is based on psychopathology" (Skeem et al., in press).

The numbers reported here are the average percentages of reports that obtained ratings of 0 (none), 0.5 (implied), 1 (asserted), or 2 (substantiated) across the domains listed in Table 1. For example, across CST domains, an average of 34% of reports provided no logical link between a CST impairment and a symptom of psychopathology.
Using Forensically Appropriate Methods of Assessment

The role of testing in CST assessments. Forensic examiners have historically been criticized for relying on traditional methods of clinical assessment and failing to explain any relationship between the results of such assessments and defendants’ competence (Eizenstadt, 1968; Elwork, 1984; Grisso, 1986, 1987). Our study indicated that little progress has been made with respect to this issue (see also Heilbrun & Collins, 1995; Nicholson et al., 1995).

Few (25%) of the reports in our study described the evaluator having used clearly relevant competence assessment instruments in their evaluations (Skeem et al., in press). In contrast, most (69%) of the reports described the evaluator having administered traditional psychological instruments, which typically included intelligence (e.g., Wechsler Adult Intelligence Scale—Revised), personality (e.g., the Minnesota Multiphasic Personality Inventory—2), and/or neuropsychological tests. Very few (30%) of these reports related the results of the test battery to the defendant’s competence. In fact, the few reports that did merely asserted a vague relationship between the results of testing and the defendant’s competence (e.g., “The defendant’s verbal learning and memory abilities are impaired and may compromise his ability to assist counsel”); none of the reports detailed a concrete relationship between the two (e.g., “The defendant’s verbal learning and memory abilities are impaired and may affect his ability to recall the events in his trial as they unfold”). Although an alternate forensically relevant purpose for traditional testing might be to rule out malingering, only 21% of the reports described using the tests to do so (Skeem et al., in press).

Psychological testing should be used in a forensic evaluation only when it can be specifically related to the legal construct (Grisso, 1987; Heilbrun, 1992; Nicholson & Kugler, 1991). The construct of CST differs from clinical constructs such as intelligence, psychopathology, and personality. Measures of clinical constructs do not neatly translate into CST and can produce invalid conclusions about competence (see Carbonell, Heilbrun, & Friedman, 1992; Grisso, 1987; Nicholson & Kugler, 1991; Reich & Wells, 1985). Because the presence and nature of overlap between psychiatric symptoms and psycholegal abilities is fundamentally unknown (Nicholson & Kugler, 1991; Shah, 1981), we recommend that traditional tests be used only when they can be concretely related to the competence issue or used to rule out malingering. In contrast, competence-specific measures (see Grisso, 1986, for a review) should be used more routinely because they are strongly associated with determinations of CST and promote good interexaminer reliability (see Nicholson & Kugler, 1991; Skeem et al., in press).

Consulting third-party sources of information. Examiners have also been criticized for basing their opinion solely on information obtained from the defendant’s self-report during a single interview (Bennett, 1985; Bonnie & Slobozin, 1980; Grisso, 1986). Along with several contemporary studies (Heilbrun & Collins, 1995; Heilbrun, Rosenfeld, Warren, & Collins, 1994; cf. Nicholson et al., 1995), our study suggests that examiners relatively infrequently consult third-party sources of information to broaden their information base and corroborate their opinions.

In our study, very few (9%) of the reports described the evaluator having contacted (or even having attempted to contact) the defendant’s attorney (Skeem et al., in press). Although a majority (65%) of the reports described the evaluator having reviewed police reports on the defendant’s alleged crimes, only 37% cited the defendant’s mental health records. On the basis of information included in the reports, examiners’ failure to consult records was virtually never attributable to a lack of availability of the records.

An examiner will be at a considerable disadvantage in evaluating the defendant’s [competence to stand trial] if the examiner does not know the basic facts of the case” (Grisso, 1988,

In some instances, it may be impossible to directly assess the link between symptomatology and CST impairments. For instance, it may not be possible to directly assess whether a defendant’s lability and poor control of his impulses would cause him to behave inappropriately in court. However, if the defendant had attended a court proceeding before the CST issue was raised, an examiner could obtain information about his behavior during those proceedings from his attorney. If no such information was available, an examiner might rely on related observations (e.g., behavior during the examination) to form an opinion and carefully explain the indirect basis for the opinion to the court.
The defendant's attorney is a vital source of information to consult in determining (a) the reason that the competence issue was raised, (b) the contextual characteristics and likely demands of the defendant's case, (c) the nature of the relationship between the defendant and the attorney, and (d) the attorney's degree of skill and experience in handling mentally disordered defendants (Golding, 1993; Hoge, Bonnie, Poythress, & Monahan, 1992; Melton et al., 1997). Mental health records are crucial sources of external validation in assessing "malingering, exaggeration, or minimization of symptomatology and degree of disturbance" (Golding, 1993, p. 30). In a similar manner, the police report on the alleged offense forms the backbone of the information necessary to conduct an informed inquiry into a defendant's psychological abilities, including his or her capacity to disclose relevant information to counsel and to appraise the charges and potential penalties (Golding, 1993). The standards of accountability for forensic evaluation are higher than those for traditional clinical assessment (American Psychological Association, 1992; Committee on Ethical Guidelines for Forensic Psychologists, 1991; Grisso, 1988). Thus, we strongly recommend that third-party sources of information be routinely consulted in conducting CST assessments.

The Underlying Issue: Insufficient Training

To this point, we have analyzed and provided recommendations for addressing three critical problems with occasional experts' CST reports: (a) failure to address critical psychological abilities, including decisional competence; (b) failure to explain the psychological reasoning underlying one's conclusions; and (c) failure to use forensically relevant methods of assessment. A comparison of these three problems with the more egregious problems revealed in early studies of CST reports reveals modest, but significant, improvement over the past two decades. To be specific, examiners now at least address the relevant issue of CST (Heilbrun & Collins, 1995; Nicholson et al., 1995; Skeem, 1996) and do not directly equate incompetence with psychosis (e.g., Skeem, 1996). However, there is clearly much room for improvement.

The results of our study suggest that occasional experts rely primarily on their traditional clinical skills and attempt to generalize these to psychological assessments. Despite their adequate substantiation of their clinical opinions, these examiners provided little substantiation and reasoning for their forensic opinions. Despite their adequate rates of reliability with respect to a defendant's diagnosis and symptomatology, they typically disagreed with respect to a defendant's specific psychological abilities and impairments (see Skeem et al., in press). Despite their thorough testing of psychological functions, they rarely used competence assessment instruments. Given their lack of familiarity with the competence construct, these examiners apparently focused primarily on assessing psychopathology. If psychopathology was present concomitantly with even minimal psychological impairment, they often deemed the defendant incompetent (Skeem et al., in press) without describing the link between the psychopathology and psychological impairment and without considering the context of the case. These CST reports often appeared to be modified standard clinical reports.

This finding indicates a need for more than minimal training. Our study indicated that examiners' attendance at two annual 2-day workshops did not improve their reports (see Footnote 2). In the few states that provide forensic training, these brief workshops are the modal form of training provided (Farkas et al., 1997). These workshops appear to be of insufficient scope. Melton and his associates (1985) found that community examiners who completed a comprehensive training program in Virginia obtained higher scores on tests of forensic knowledge and completed reports that were rated more favorably by legal personnel than those completed by untrained examiners. Their training program consisted of 50 hours of lecture, demonstration, and, perhaps most important, supervised evaluation.

Training programs would likely be most effective if they specifically targeted common problems with examiners' forensic assessments. These include the three primary problems revealed in this and other empirical studies (Heilbrun & Collins, 1995; Nicholson et al., 1995) and the overlapping problems cited by experts over the past two decades (see Grisso, 1986). Also, as suggested above, training programs would ideally include a supervised evaluation component in which examiners are provided with individualized feedback.

The institution of more comprehensive, focused training programs could be accompanied by the development of more stringent certification requirements for forensic examiners and systems for systematically monitoring report quality by means of processes such as peer review of reports (see Appelbaum, 1992; Farkas et al., 1997). With the institution of such measures, the quality of forensic assessments and reports would improve to a much greater extent over the next two decades than they have in the past. This improvement would help promote the development of forensic psychology into a more respected and "responsible industry" (see Grisso, 1987, p. 836). More important, instituting such programs would better protect the legal rights implicated in forensic evaluation and would ultimately save considerable sums of public moneys that are desperately needed for general mental health treatment.

References

Bonnie, R., & Slobogin, C. (1980). The role of mental health profession-


By improving the evaluation of competency to stand trial (CST), forensic services can more effectively manage the mental health needs of criminal defendants. This approach not only enhances judicial decision-making but also supports the development of a comprehensive understanding of the implications for forensic services and the legal system.

**References**

- Sieling v. Eyman, 478 F.2d 211 (9th Cir., 1973).

Received October 10, 1996
Revision received January 9, 1998
Accepted February 6, 1998