I. INTRODUCTION

Definition of Malingering
- Intentional presentation of false mental state
- Production of false symptoms
- Exaggeration of true symptoms
- Suppression of true abilities
- To avoid undesired consequences
- To obtain desired goals

Models of Malingering
- Pathogenic: People who malinger are mentally ill
- Criminologic: People who malinger are bad
- Adaptational: People who malinger are trying to make do (Rogers, 1997)

Adaptational Model of Malingering (Rogers, 1997)
- Context of evaluation is perceived as adversarial
- Personal stakes are very high
- No other alternative to malingering appears viable

Malingering and the DSM-IV: Malingering should be suspected if:
- Medico-legal context of presentation
- Marked discrepancy between the person’s claimed distress and objective findings
- Lack of cooperation with diagnostic evaluation or with prescribed treatment regimen
- Presence of antisocial personality disorder

Incidence Rates of Malingering in Criminal Cases
- In over 1000 criminal defense cases 19% were feigning cognitive impairment. Mittenberg, et. al
- U.S. Medical Center 1990-1997: Competent: 81.%    Incompetent: 19%
- 54% of cognitively incompetent criminal cases were determined to be probable or definite cognitive malingering (Ardolt, et.al., 2007, using the Slick criteria)

Therapeutic vs. Forensic Exams
- Therapeutic exams always assume primary benefit is to patient. Assumes patient seeks treatment or evaluation for primary benefit.
- Forensic exams always assume primary benefit is to provide accurate information about the defendant/inmate. Defendant’s potential benefit is not primary consideration.

Tasks for the Evaluator
- Identify instances of improbability.
- Ascribe bad intentions to defendant.
- Characterize attempt to malingering as conscious and deliberate.
- Have convincing evidence.
- Understand the motives of the defendant.
II. ASSESSMENT FOR MALINGERING

1) Interviewing for Improbability
   - Make sense of presentation
   - Carefully examine case history
     o Differentiate between self-report and objective findings
     o Don’t confuse facts with opinions
   - Floor Effect: Failing to correctly answer basic questions or complete simple tasks (e.g., “What is your name?”; “How old are you?”; recitation of the alphabet, counting, simple math problems”.
   - Review of the file
   - Collateral data (e.g., jail visits, phone calls, daily pod log)
   - Collateral interviews

2) Testing for Malingering
Testing does not substitute the professional’s opinion, it serves as an aid to the professional. Psychologists vs. Psychiatrists vs. Social Workers vs. Therapists

Specific psychological tests for malingering
   - Miller Forensic Assessment of Symptoms Test (M-FAST)
   - Structured Interview of Reported Symptoms (SIRS)
   - Structured Inventory of Malingered Symptomatology (SIMS)
   - Evaluation of Competency to Stand Trial – Revised (ECST-R)
   - Test of Memory Malingering (TOMM, for claimed cognitive deficits)
   - Validity Indicator Profile (VIP, for claimed cognitive deficits)

Advantages of psychological tests
   - Questions are asked in standardized manner
   - Idiosyncratic contributions of interviewer are minimized
   - Results are comparable to every other administration of the test
   - Clinical prediction, diagnoses, and classifications governed by same decision rules

III. DIAGNOSING MALINGERING

1) Decision Making
   - Not malingering
   - Malingering but still incompetent
   - Malingering and competent

2) Communicating the Results
   - Identify instances of improbability (“Pull the trigger!”)
   - Minimize disclosure of test secrets
   - Ascribe motives for malingering
   - Identify alternative hypotheses
   - Explain why the other hypotheses are not likely
"What Tests Are Acceptable for Use in Forensic Evaluations? A Survey of Experts"

A survey of diplomats in forensic psychology regarding both the frequency with which they use and their opinions about the acceptability of a variety of psychological tests in 6 areas of forensic practice. The 6 areas were mental state at time of the offense, risk for violence, risk for sexual violence, competency to stand trial, competency to waive Miranda rights, and malingering. See the full article that is included in this section.

For evaluations of individual’s competency to stand trial, at least half of the respondents rated the following tests as acceptable: MacArthur Competence Assessment Tool–Criminal Adjudication (MacCAT-CA), Competency to Stand Trial Assessment Instrument, WAIS–III, Competency Screening Test, Interdisciplinary Fitness Interview—Revised, Georgia Court Competency Test, MMPI-2, PAI, Stanford–Binet–Revised, Halstead–Reitan, and Luria - Nebraska. Of all those tests, only the MacCAT-CA and the WAIS–III were recommended by the majority of respondents. The diplomats were divided between acceptable and no opinion about the acceptability of using the WASI, Georgia Court Competency Test–Mississippi Hospital, and Competency Assessment for Standing Trial for Defendants With Mental Retardation for a competency to stand trial evaluation. The MCMI–III, which the majority of respondents were divided between acceptable and unacceptable, was categorized as equivocal–unacceptable. At least half of the sample viewed as unacceptable the MCMI–II, Rorschach, 16PF, projective drawings, sentence completion, and TAT. At least half of the respondents also had no opinion about the use of the Computer Assisted Determination of Competency to Proceed and KBIT.

In regard to the forensic assessment of malingering, the majority of the respondents rated as acceptable the Structured Interview of Reported Symptoms (SIRS), Test of Memory Malingering, Validity Indicator Profile, Rey Fifteen Item Visual Memory Test, MMPI-2, PAI, WAIS-III, and Halstead-Reitan. The SIRS and the MMPI-2 were recommended by the majority. The psychologists were divided between acceptable and unacceptable about using either version of the MCMI (II or III). They were also divided, although between acceptable and no opinion, for the WASI, KBIT, Luria-Nebraska, and Stanford-Binet-Revised. The diplomats viewed as unacceptable for evaluating malingering the Rorschach, 16PF, projective drawings, sentence completion, and TAT. The majority gave no opinion on the acceptability of the Malingering Probability Scale, M-Test, Victoria Symptom Validity Test, and Portland Digit Recognition Test.

– 7:40 am By
Appendix A: Description of Malingering Tests

The MacCAT-CA is a 22-item structured interview for the pretrial assessment of adjudicative competence. This instrument uses a vignette format and objectively scored questions to standardize the measurement of three competence-related abilities.

- Understanding capacity for factual understanding of the legal system and the adjudication process.
- Reasoning ability to distinguish more relevant from less relevant factual information and ability to reason about the two legal options: pleading guilty or not guilty.
- Appreciation capacity to understand his or her own legal situation and circumstances.

The MacCAT-CA begins with the presentation of a brief vignette describing a hypothetical crime upon which the eight Understanding and the eight Reasoning items are based. The 16 items involve queries about prosecution of the hypothetical defendant. This approach was designed to introduce legal issues in a way that distances the defendant from the specifics of his/her own case. The six Appreciation items query defendants about their attitudes and beliefs concerning the legal process involved in their own cases.

The format of the MacCAT-CA Interview Booklet facilitates easy administration, recording, and scoring of the defendant's responses. Items appear on the right-hand page of the Booklet. The facing page contains scoring criteria for that item. The examiner assigns a value of 0, 1, or 2 based on the scoring criteria. The final page of the Booklet is a Scoring Summary form for transferring and summing the item scores for Understanding, Reasoning, and Appreciation. The MacCAT-CA Professional Manual presents guidelines for the clinical interpretation of these three measures based on a national norming study of 729 defendants. Score ranges are provided for three levels of impairment (none or minimal, mild, or clinically significant) for each measured ability. The MacCAT-CA Interview Booklet also provides space for examiners to record case-specific observations that may be relevant for follow-up.

The professional manual presents important findings from the MacArthur "field studies" and the NIMH "norming" study that support the use of the MacCAT-CA in clinical evaluations of adjudicative competence. The MacCAT-CA has been validated with three groups of criminal defendants with the following characteristics: (a) randomly selected jail inmates whose competence was not in doubt, most of whom had neither active nor prior mental health problems \(n = 197\), (b) jail inmates whose competence was not in doubt, but who were currently receiving treatment for a variety of mental disorders \(n = 249\), and (c) adjudicated incompetent to proceed as a result of mental illness \(n = 283\).

The MacCAT-CA is considered appropriate for use with both felony and misdemeanor defendants ages 18 years and older. It may be used in inpatient, outpatient, forensic, and correctional settings both prior to, and subsequent to, adjudication of competence to proceed with the criminal process. It may also be used to assess treatment progress with respect to restoration of competency. Evaluation of Competency to Stand Trial – Revised (ECST-R at PAR)

The ECST-R is an objective measure of competency. It includes systematic screenings for feigned incompetency—psychotic and nonpsychotic domains) with two detection strategies (i.e., atypical presentation and symptom severity) to screen for feigned incompetency.

The ECST-R is appropriate for use with individuals ages 18 years and older who are involved in adult proceedings. It was also validated on defendants with a range of cognitive abilities. Most defendants with functional intelligence in the borderline and upper level of mild mental retardation (i.e., IQs = 60-69) can be tested with the ECST-R.

Competence Assessment to Stand Trial For Defendants With Mental Retardation (CAST*MR). @ http://www.idspublishing.com/cast/
Ages: Adults & Adolescents. Time: 34-40 mins.

- Pioneering forensic instrument
- Widely-Used in courts throughout USA
- Committed authors who have made a difference

The CAST*MR is a standardized instrument for forensic evaluators to assess the competence of persons with mental retardation to stand trial. Based on criteria in the case of Dusky vs United States, the CAST*MR has separate sections for Basic Legal Concepts, Skills to Assist Defense, and Understanding of Case Events. The examiner reads each question aloud and records the client's response in a booklet. There is a reusable Subject Form that allows the client to follow along as the examiner reads the question. Reliability estimated at .92 (internal); .90 test-retest. Interscorer reliability in Part III estimated at 80% and at 90%. A panel of expert criminal disability lawyers rated the items and the format favorably. The CAST*MR was favorably reviewed by Deborah K. Cooper, Ph.D. and Thomas Grisso, Ph.D. in Behavioral Sciences and the Law, 15, 347-364 (1997). The instrument has been used in many forensic assessments.

Miller Forensic Assessment of Symptoms Test (M-FAST at PAR)
The M-FAST is a brief 25-item screening interview for individuals ages 18 years and older that provides preliminary information regarding the probability that an individual is feigning psychiatric illness. Most malingering and symptom validity instruments assess malingered cognitive and/or neuropsychological deficits. The M-FAST focuses exclusively on malingered psychiatric illness.

The M-FAST takes 5-10 minutes to administer. The brief interview format saves valuable clinical time and provides considerable flexibility for the clinician to determine when, where, and to whom the M-FAST should be administered. The M-FAST may be integrated into a larger evaluation with minimal difficulty.

Structured Interview of Reported Symptoms – Version 2 (SIRS-2 at PAR)
The Structured Interview of Reported Symptoms- Version 2 (SIRS-2) is a controlled interview designed to detect malingering and other forms of feigning of psychiatric symptoms. The content covers a wide range of psychopathology, as well as symptoms that are unlikely to be true. The SIRS-2 is designed to detect eight response styles commonly associated with feigning. Each of these response styles are described by one of four classifications: 1) honest, 2) indeterminate, 3) probable feigning, or 4) definite feigning

The SIRS consists of eight primary and five supplementary scales for the assessment of feigning, including a scale to assess defensiveness; the content of each scale varies so that endorsement of items on a particular scale does not reflect any specific mental disorder. It is appropriate for individuals ages 18 – 100 years old. It takes approximately 1 hour to administer.

Structured Inventory of Malingered Symptomatology (SIMS at PAR)
The SIMS is a 75-item, true/false screening instrument that assesses for both malingered psychopathology and neuropsychological symptoms. It is used on defendants 18 and older and takes approximately 15 minutes to administer. The instrument reduces clinician burden and increases assessment efficiency by serving as a screen for malingering and by reducing hands-on administration time. In addition to serving as a screening measure, the SIMS can be used as part of a battery of tests providing convergent evidence of malingering, rather than relying on a single instrument for diagnosis. The SIMS also is recommended as part of a comprehensive approach to the evaluation in which alternative hypotheses for response patterns are to be considered.

Test of Memory Malingering  (TOMM at PAR)
The TOMM instrument is designed to provide a reliable, economical first step as part of a full psychological battery to help assess whether an individual is falsifying symptoms of memory impairment. It is given to defendants 16 and older. It takes approximately 15 to 25 minutes to administer.

Validity Indicator Profile   (VIP at Pearson)
The Validity Indicator Profile (VIP) is a general assessment of response style designed to identify valid and invalid responding. The VIP can be used as a validity indicator for concurrently administered tests. It is given to subjects 18-69 years of age. It takes approximately 1 hour to administer.

When the VIP indicates that the test-taker's approach to the assessment was valid, the clinician can generally have
confidence that the individual intended to perform well on the test and made a concerted effort to do so. In some cases, a finding of invalidity on the VIP indicates insufficient effort to respond correctly or suboptimal attention and concentration during testing. In other instances, invalidity indicates a lack of cooperation, reflecting a deliberate attempt to perform poorly.
RELEVANT ASPECTS OF DR. SIMPSON’S EXPERIENCE

• Certified and listed as an expert witness by the Arizona Supreme Court.
• Provide forensic psychology services to the Arizona Superior Court for Rule 11s, risk assessment, involuntary committal, psychosexual evaluations and general assessment.
• Provided training on Mental Health Evaluations in Homicides and Crimes of Violence (June 2, 2011). State Bar of Arizona CLE. Presented on psychological evaluations (State-of-Mind, competency, future risk) and participated with a panel of judges, prosecutors, and defense attorneys.
• Provided training on Understanding Malingering (9/25/09). Pima County Attorney’s Office.
• Provided training on Understanding Malingering (4/24/09). Pima County Public Defenders Office.
• Provided training on Understanding the DSM-IV-R (9/29/07). Pima County Public Defenders Office.
• Provided training on Malingering (2/11 and 2/12 of 2009). A basic- and advanced-track seminar for Arizona mental health experts in legal competency and restoration. Sponsored by the Arizona Supreme Court.
• Have provided over 230, one-day trainings for counseling professionals and probation officers on understanding and treating sexual compulsions since 2003. This includes strategies for working with sex offender populations.
• Since 2009 provided a lecture series on Youth and Technology for professional and parent audiences.
• Extensive background in working with victims and perpetrators of sex crimes in outpatient and inpatient settings. This has included individual and family counseling, group counseling, and court-ordered psychosexual evaluations (including the plethysmograph).
• Past officer with the Providers’ Association for Treatment of Sexual Abusers (PATSA).
• Former case manager with Child Protective Services. This included training in child interview and court procedures.
• Throughout the 1990’s was national educator on False Memory Syndrome and trained thousands of counseling professionals on standards of practice, including the dangers of recovered memory therapy. Also served as an expert consultant to the Arizona Board of Psychologist Examiners.

DR. SIMPSON’S FORENSIC TRAINING

Ethical and Effective Court Testimony. American Academy of Forensic Psychology. (Nov. 5, 2011). Dallas, TX.

Law School Crash Course. American Academy of Forensic Psychology. (Nov. 4, 2011). Dallas, TX.

Mental Health Evaluations in Homicides and Crimes of Violence. State Bar of Arizona CLE., June 2, 2011, Tucson, AZ). In addition to being an attendee, also presented on psychological evaluations (State-of-Mind, competency, future risk) and participated with a panel of judges, prosecutors, and defense attorneys.


Training Mental Health Experts in Legal Competency and Restoration. State of Arizona Supreme Court. (Feb. 11-12, 2009). Phoenix, AZ. (Certification to provide forensic services in Ariz. courts)


Certification in the Hare Psychopathy Checklist. Taught by Dr. Hare. (2007, Oct. 25 & 26). Larned, KS.

Training Mental Health Experts in Legal Competency and Restoration. State of Arizona Supreme Court. (May 3-4, 2007). Tucson, AZ. (Certification to provide forensic services in Ariz. courts)


Training Mental Health Experts in Legal Competency and Restoration. State of Arizona Supreme Court. (Sept. 23-25, 2003). Phoenix, AZ. (Certification to provide forensic services in Ariz. courts)


Psychopharmacology Update. 2nd Annual Southwest Regional Psychiatric Pharmacology Update. (1996, Oct. 4-5). Phoenix, AZ.


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