Older Adults' Decision-Making and the Law

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CHAPTER 3

Assessing Everyday Competence in the Cognitively Challenged Elderly

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What the elderly fear most, often even more than dying, is the loss of independence—the inability to care for oneself, to manage one's affairs, and to live independently in the community. The Solomon-like decision that must be made in guardianship or conservatorship cases involves weighing the legal rights and desires of the elderly for autonomy and independence versus beneficence, society's obligation to protect and care for the incompetent or disabled. The purpose of this chapter is to relate the psychological literature on cognitive

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competence to issues regarding legal decisions and judgments concerning the capability of older adults to care for themselves and to manage their affairs (Appelbaum & Grisso, 1988; Kapp, 1992; Parry, 1985). For the past decade or so there has been a new specialty in the study of cognitive aging that has focused on everyday problem solving or practical intelligence (Poon, Rubin & Wilson, 1989; Puckett & Reese, 1993; Sinnott, 1989). This chapter relies heavily on this perspective, including much of my recent research, which has been in this domain (Willis, 1991; Willis & Marsiske, 1990; Willis & Schaie, 1993).

This chapter involves two major sections. The first part will consider characteristics of legal competence from a psychological perspective. Scholars such as Kapp (1992), Grisso (1986, 1994), and Sabatino (this volume) have suggested that there are several characteristics that provide a common structure in defining legal competencies. The second part of the chapter will deal with issues related to forensic assessment instruments and their use in the evaluation of everyday competence in the cognitively challenged older adult.

The emphasis is on the cognitively challenged elderly, not solely the cognitively impaired elderly. The terms *cognitive impairment* or *disability* often suggests a disorder that is pathological in etiology and is considered irreversible. However, there are many elderly who are cognitively challenged by the tasks of daily living due to socioeconomic and/or cultural disadvantages throughout life, although they suffer from no diagnosed disorder. Given recent rapid technological advances and positive cohort trends in education, today's elderly are particularly likely to be challenged as a function of sociocultural change (Pifer & Bronte, 1986). The fastest growing segment of our population are the oldest old—those in their 80s and 90s (Suzman & Riley, 1985; U.S. Congress, Senate Special Committee on Aging, 1987–1988). They are most likely to be vulnerable to the effects of rapid sociocultural change, as well as to normative nonpathological age-related change in intellectual functioning (Schaie, 1983; 1990). If the judgments of legal incompetence are now to focus largely on functional abilities, then broader consideration must be given to elderly who are cognitively challenged for reasons other than mental disorders or pathologies.

DEFINING COMPETENCE

We must first begin with the definition of the term competence as it has been used in the law and in psychological theory and research. Table 3.1 presents several definitions from both legal and psychological perspectives. Although psychological definitions focus on competence, in contrast to legal definitions that focus on incapacity or impairment, there are several areas of similarities. First, there is an emphasis on cognition and on decision-making capacity, in particular. Second, the focus is on

TABLE 3.1 Definitions of Competence

LEGAL:

Incapacitated Person: One "who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause (except minority) to the extent of *lacking sufficient understanding or capacity to make or communicate responsible decisions*" (Uniform Probate Code and Uniform Guardianship and Protective Proceedings Act).

"In the past few years, several states have made substantive changes in their guardianship laws..by substituting . . . more objective standards, designed to focus on the individual's *functional ability to manage personal care or finances on a daily basis*—that is the focus more on the person's ability to meet basic needs rather than just his or her 'condition' " (Kapp, 1992; Wang, Burns, & Hommel, 1990).

"A legal finding of incompetence signifies that a person, because of a lack of the capacity to contemplate choices rationally, *cannot care adequately for person or property*" (Kapp, 1992).

PSYCHOLOGICAL:

"Everyday competence represents the adult's *ability or potential to perform adequately those activities considered essential for living on one's own*" (Willis, 1991).

"Cognitive competence . . . can be loosely interpreted as *the utilization of one's abilities-cognitive, interpersonal, and others—in adapting to particular situations*. Cognitive ability and cognitive competence are at least somewhat independent because it may be possible for a person with a low level of cognitive ability to achieve a high degree of competence by maximizing his or her usage of available abilities for functioning in specific situations" (Salthouse, 1990).

"Behavior under control of *cognitive processes* and employed toward the *solution of problems which challenge the wellbeing, needs, plans, and survival of individuals*" (Charlesworth, 1976).

functional tasks, or applied cognition—the ability to make decisions and to carry out activities essential for daily living. Third, the context in which competence is of concern is the naturalistic or everyday environment of the individual, not the scientific laboratory or the courtroom, in most instances.

LEGAL COMPETENCIES: COMMON CHARACTERISTICS

A review of the legal literature suggests that a common structure can be identified in legal competencies as diverse as competency to stand trial, competency as caretaker of a child, and competency to manage one's property. Six common characteristics of legal descriptions of competencies have been identified by Grisso (1986) and others (Altman, Parmelee & Smyer, 1992; Anderer, 1990; Kapp, 1992). These characteristics are:

(a) A recent trend in the literature on legal competencies has been a focus on *functional abilities* (that which a person knows, understands, believes, or can do). The principal objective of forensic assessment, then, is viewed as the evaluation of the older adults functional abilities that are conceptually relevant to the legal competency in question.
(b) Historically, judgments of legal incompetence have included a statement of *cause*—a disorder or disability that was considered to be the basis for the elderly person's functional deficits (Anderer, 1990; Sales, Powell & Van Duizend, 1982). Many legal statutes continue to include causal inferences in their definitions of competence.
(c) What functional abilities are relevant in order for an older adult to function competently at a given point in time is defined by the *general environmental context*. The critical functional abilities for an older adult do not exist in limbo, but are circumscribed by the sociocultural context.
(d) Although the broad sociocultural environment dictates what functional abilities are most important to live independently, the *person-context interaction* determines the level of competence required of an elderly individual. The congruency or incongruency between a person's level of functional ability and the demands of the older adult's environment must be determined (Lawton, 1982).
(e) Legal competencies are *judgmental* in that they require a legal or moral evaluation that there is sufficient incongruence between a person's abilities and contextual demands to warrant a finding of incompetence, and
(f) Finally, judgments of legal competency are *dispositional* in that they may involve depriving the older adult of fundamental rights, such as decision making about the care of oneself and the maintenance of one's property.

Functional Abilities or Capacities

The central question in guardianship and conservatorship cases is whether the individual's level of functional abilities are sufficient for the contextual demands experienced by that elderly individual.

Domains of functional competence.

Most older adults are not totally incompetent. Until quite late in a dementing illness, for example, an older adult may remain competent to perform selected tasks of daily living (Vitaliano, Breen, Albert, Russo, & Prinz, 1984). In most forms of dementia, cognitive deficits are evident before deficits in basic self-care activities. Moreover, there is some evidence that cognitive functioning declines in a progressive manner, with deficits being first exhibited in complex cognitive tasks such as those involving inductive reasoning or decision making in novel, unfamiliar situations (Ashford, Kolm, Colliver, Bekian, & Hsu, 1989).

Recognition of the fact that competence is not an all-or-nothing phenomenon is reflected in the recent trend toward choosing the "least restrictive alternative" in guardianship judgments (Parry, 1985). There is a trend for guardians to be appointed as surrogate decisions makers in only selected domains of activity, such as the management of financial affairs.

Although there is a trend toward legal judgments regarding guardianship being increasingly domain-specific, rather than being global or inclusive in nature, most state statutes remain very broad and general. Legal statutes typically mention only very general capacities, such as the

ability to "make or implement decisions" to "provide health care, food, clothing, and shelter" or to "know the nature of business transactions." The two most common very broad domains of functional competence found in legal statues are: 1) Caring for self and 2) Managing one's property. The Uniform Probate Code (UPC, 1989) distinguishes between proceedings regarding care of the person (guardianship) and those related to property (conservatorship). A major challenge in assessing competency and in making judgments is defining the particular functional abilities associated with "caring for self and/or managing one's property" that are relevant in a given case.

The theoretical and empirical work in psychogerontology can contribute significantly to scholars' attempts to categorize functional abilities associated with self-care and property management (Grisso, 1986; Kapp, 1992; Quinn, 1989; Quinn & Tomita, 1986). Two major categories of functional abilities have been espoused in the gerontological literature (Fillenbaum, 1987a,b,c; Kane & Kane, 1981): (a) activities of daily living, commonly known as ADLs, that focus primarily on self-care, including feeding, bathing, toileting, and basic mobility (Katz, Ford, Moskowitz, Jackson, & Jaffee, 1963); and (b) instrumental activities of daily living, commonly known as IADLs (Fillenbaum, 1987a,b). The IADLs are viewed as fairly complex, but essential, abilities required in order to live independently in our society. Seven IADL activity domains (see Table 3.2) are commonly cited: managing medications, shopping for necessities, managing one's finances, using transportation, using the telephone, maintaining one's household (housekeeping), and meal preparation and nutrition (Fillenbaum, 1985; Lawton & Brody, 1969). In terms of the distinction made in the Uniform Probate Code (1989), "caring for self" may include the IADL domains of managing medication, meal preparation and nutrition, using transportation, and using the phone. "Managing property" includes the IADL domains of maintaining one's household, shopping for necessities, and managing one's finances.

Grisso (1986) and others have argued that it is the IADLs that are of primary interest in legal guardianship cases. The elderly person may be able to engage in basic self-care activities and still have serious deficiencies in making decisions regarding independent living and in managing property. In cases where the individual is lacking in these most basic self-care functions (ADLs), the deficiencies are often sufficiently obvious and serious that institutionalization is required.

TABLE 3.2 Instrumental Activities of Daily Living

DOMAIN	EXEMPLAR TASK
Managing medications	Determining how many doses of cough medicine can be taken in a 24-hour period.
	Completing a patient medical history form
Shopping for necessities	Ordering merchandise from a catalog
	Comparison of brands of a product
Managing one's finances	Comparison of Medigap insurance plans
	Completing income tax return form
Using transportation	Computing taxi rates
	Interpreting driver's right-of-way laws
Using the telephone	Determining amount to pay from phone bill
	Determining when telephone discounted time rates apply
Maintaining one's household	Following instructions for operating a household appliance
Meal preparation and nutrition	Evaluating nutritional information on food label

Deficits in capacity and in decision making versus in performance.

Two distinctions are important in defining, assessing, and making judgments regarding competence. The first distinction focuses on the individual's capacity to care for self and to manage property versus what the individual actually does routinely in daily life. The terms *competence*, *ability*, and *capacity* are used frequently in both the legal and psychological literature. These terms have been used to denote constructs in both the psychological and legal literature (Grisso, 1986). Constructs are conditions or states that cannot be observed directly; only their behavioral signs or reflections can be observed. In the psychological literature, the terms "competency" and "ability" represent the *potential* or *capability* of the individual to perform certain tasks, not necessarily the actual daily behaviors of the individual (Salthouse, 1990; Willis, 1991). Competence represents the ability to carry out, when necessary, a broad array of activities considered essential for independent living, even though in daily life the adult may not perform these activities or only perform a subset of these activities.

Functional assessment has traditionally addressed the question, "*Can* the individual perform an activity?" not "*Does* the individual perform the activity on a regular basis?" This distinction is important because psychological research indicates that different factors may be involved in determining (explaining) whether an individual has the requisite functional competence or ability than in determining whether the individual carries out an activity when it is required or needed. Organic brain syndromes are often cited as a major explanatory variable in determining competence. The individual lacks the cognitive capability. On the other hand, the nondemented individual may be capable of carrying out necessary activities but may not do so due to factors such as self-efficacy beliefs or depression (Fitten & Waite, 1990; Swartz & Stewart, 1991).

The second distinction focuses on whether the elderly have the capability to *make decisions* regarding care of self and property versus whether they can actually perform the necessary activities themselves (Anderer, 1990; Bersoff, 1992; Smyer, 1993). It has been argued that competence rests not on whether the elderly can perform tasks themselves without assistance, but on capability to make decisions regarding care and to direct others in managing their affairs. In the legal literature, the distinction between capacity and actual behavior has focused on the elderly's functional capacity to make decisions, rather than on the *reasonableness* of their decisions. An "unreasonable" decision such as refusing medications may be implemented if the patient has the functional capacity to make the decision (Legal Counsel for the Elderly, National Protective Support Center, 1989; National Conference of the Judiciary on Guardianship Proceeding for the Elderly, 1986).

Components of decision making.

Research on decision making and problem solving in the psychological literature becomes of interest, given the increasingly salient role in legal judgments that is being given to the capacity of the elderly to make decisions. Numerous models of problem solving are present in the literature (Nezu & Nezu, 1989; Sternberg & Kolligian, 1990; Voss & Post, 1988). In previous work (Willis & Schaie, 1993) we have suggested that at least five components are involved in making decisions related to tasks of daily living (Figure 3.1). There is a hierarchical relationship among components in this framework. Basic mental abilities and domain-specific knowledge bases are necessary components in decision making, but are not sufficient for generation of adequate problem solutions; there must also be consideration of the elderly's perception of the social and physical environment associated with the problem or task and the individual's beliefs and preferences regarding alternative solutions.

A. Relevant Mental Abilities and Skills
B. Domain-specific Knowledge Base
C. Understanding of:
   1. Personal Circumstances
   2. Interpersonal Context
D. Attitudes, Beliefs, Preferences
E. Integration of Dimensions

Everyday problem solving is a recursive process. At each cycle in the recursive process, any or all of the dimensions in problem solving may have changed.

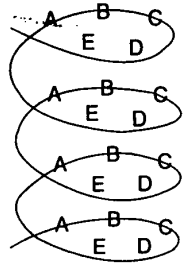

Figure 3.1. Components of everyday decision making and the recursive nature of everyday decision making.

a. *Mental abilities.* Our prior research has indicated that many of the basic abilities (e.g., verbal, reasoning, memory) studied by psychologists in their laboratories are required in solving tasks associated with daily living. However, tasks of daily living are often very complex and thus involve more than one mental ability (Willis, 1991; Willis, Jay, Diehl, & Marsiske, 1992; Willis & Schaie, 1986). For example, comparing alternative medigap health insurance plans was found to involve both verbal ability and inductive reasoning. While verbal ability is required to read the benefits chart, making comparisons among different insurance plans involves inductive reasoning. The individual must determine the similarities and differences among the insurance plans and determine which set of services fits his/her needs. Different constellations of mental abilities and processes will be required for various practical problems (Willis, 1991; Willis et al., 1992). Spatial orientation and verbal ability will be more important for reading a map, whereas inductive reasoning and verbal ability will be more salient for interpreting a medication label.

b. *Domain-specific knowledge*. Decision making also involves specialized knowledge related to the problem at hand. Whereas the research literature on expertise has shown relationships between a single, specialized knowledge domain and competence in a skill or profession (Ceci & Liker, 1986; Salthouse, 1990), solutions for many everyday types of tasks will require accessing several different knowledge domains (Christie, 1984). In considering medigap insurance plans, for example, the problem solver needs to have at least rudimentary knowledge not only about insurance policies and health care, but also about the Medicare system.

c. *Understanding personal circumstances and the interpersonal context*. Considered next are the more individualized, personal, affective, and social dimensions of everyday decision making in which individuals take into account their own personal circumstances and contexts (Sternberg & Kolligian, 1990). Which insurance plan, for example, represents a viable option for an elderly woman will be partially determined by personal circumstances, namely, her understanding of her financial status, as well as her understanding of her current and future health status. Likewise, the individual's understanding and assessment of his or her interpersonal context must be taken into account. For example, what types of health care services need to be purchased will depend in part on the older adult's assessment of the social support network.

d. *Attitudes, beliefs, and preferences*. Understanding and assessing one's personal circumstances reflects in part certain attitudes, beliefs, and preferences (Baltes & Baltes, 1986; Masterpasqua, 1989; Rodin, Timko, & Harris, 1985). For example, health-related locus-of-control and self-efficacy beliefs (Wallston & Wallston, 1982) will influence decisions regarding health insurance. Locus-of-control beliefs deal with whether an individual perceives control over one's life to lie primarily under one's own control or whether control is external, determined largely by fate or by powerful others (e.g., doctors, lawyers). Likewise, self-efficacy beliefs reflect one's beliefs regarding one's own competence. Current research on age-related changes in self-efficacy indicates an increased dependence on powerful others in old age (Lachman & Leff, 1989; Levinson, 1974; Willis et al., 1992). Some elderly persons may therefore increasingly seek and depend on the advice of significant others (doctors, lawyers, ministers, adult children) in making important decisions in everyday life.

In his book *Geriatrics and the Law*, Marshall Kapp (1992) repeatedly refers to how decisions by the elderly may be influenced by their "awe" or "deferential respect" for their doctor or a lawyer. From a psychological perspective, this "awe" may reflect an age-related increase in beliefs regarding powerful others—the belief that one is less competent to make decisions and therefore should depend on the advice of powerful others (Levinson, 1974; Wallston & Wallston, 1982). Several studies indicate that the belief that one needs to depend on "powerful others in making decisions increases with age" (Lachman & Leff, 1989; Willis et al., 1992). There is considerable debate whether or when increases in dependence on powerful others is efficacious (Lachman, 1986; Lachman & Leff, 1989). Nevertheless, it is important that clinicians and legal professionals involved in assessing competence and in making judgments regarding guardianship be aware of these age-related belief systems.

e. *Integration of decision-making components*. Reaching an effective solution involves integration of the above dimensions. Integration is continually occurring at various phases of the problem-solving process. In medical cases assessing the older patient's ability to give informed consent, an important component is the elderly person's ability to articulate the decision-making process and to state the rationale for the decision (Appelbaum & Grisso, 1988; Kapp, 1990). Integration of the multiple components in the decision process and articulation of the rationale for the decision reached may involve several steps: (a) identification of solution alternatives, (b) ruling out options that will not work given the individual's personal circumstances, and (c) prioritizing the remaining viable options.

Change in everyday problem-solving competence in old age.

Those involved in guardianship cases need an understanding of the normative age-related changes in capacity to make everyday decisions that occur for elderly persons with no known pathologies. Data on normative changes in decision-making competence can serve as a baseline for assessment and for decisions regarding elders who do suffer from dementia

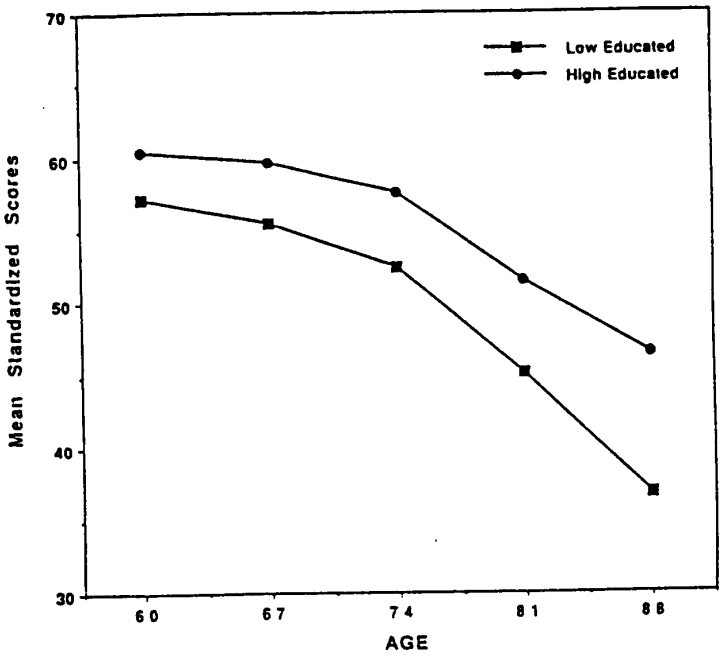

Figure 3.2. Longitudinal change in performance on everyday problems test for Low-Educated (12 or less years of schooling) and High-Educated (over 12 years of schooling) elderly.

and who may be subject to guardianship decisions. We have examined change over a 7-year interval in everyday decision-making performance (Willis & Marsiske, 1990). Figure 3.2 presents longitudinal findings regarding the pattern of change for elders with no known mental disorder; patterns of age-related change are shown for elders with 12 or fewer years of education and for those with more than 12 years. Note that, at each chronological age, less educated elders are functioning at a lower level than those with above average levels of education. While age-related decline in young-old age (60–75 years) is modest, the rate of average decline increases in old-old age (75+ years). Our data suggest that the educationally disadvantaged elderly in very old age (in their 80s

or 90s) are increasingly likely to need assistance in everyday decision making, even though they do not suffer from a specific mental disorder.

There are personal characteristics of adults that make them particularly vulnerable to functioning at lower levels of competence as they age. Education is significantly related to level of everyday competence (Willis et al., 1992). Adults with lower levels of education have greater difficulty, on average, in everyday decision making throughout their adult lives. These less educated adults become particularly vulnerable in old age when their level of functioning becomes even further diminished by age-related change in performance. The relevance of education in assessment of everyday decision making is very salient in old age, since today's cohorts of elderly people have a lower mean level of education than the total adult population. The median school years completed for elderly who are 60–74 years is 12 years, while those 75 years and older have completed only 11 years of schooling, on average (U.S. Bureau of the Census, 1989).

The need for follow-up assessment in guardianship cases.

Quinn (1989) observes that most state laws do not provide for effective review of conservatorship or guardianship decisions. One of the unique mandated roles of the court investigator in California is to review existing conservatorships, one year after appointment and every 2 years thereafter. Follow-up assessment of competence in guardianship cases is critical for several reasons. The elderly's competence in everyday decision making is likely to change either due to progression in the disorder that led to guardianship or as a function of advancing age. Follow-up assessment is particularly important given the trend toward limited guardianship in selected domains of daily living (Parry, 1985; Kapp, 1992). In the case of dementia, further decline in competence is to be expected, and hence, more extensive guardianship provisions are likely to be required.

On the other hand, if deficits in functioning are due to short-term disorders (e.g., delirium, depression) or due to lack of experience in a domain (e.g., management of finances) in which training can be provided, then future assessments may lead to removal or reduction of the guardian role. Given the negative stereotypes of aging, the potential for positive change in the elderly can be underestimated.

Research findings supporting the potential for positive change is

found both in the epidemiological literature and in cognitive training research. In an epidemiological study involving large representative samples of older adults, Blazer (1978) compared the proportion of community-dwelling versus institutionalized elderly respondents who reported themselves to have remained stable, to have declined or to have improved in everyday competence over the past year. Significant proportions of both community-dwelling elderly (18%) and institutionalized elderly (17%) perceived themselves to have improved in the past year. In our experimental training research, we have found that educational training was effective in remediating decline on a target mental ability in 40% of nondemented elderly (Schaie & Willis, 1986; Willis & Schaie, 1994).

Mental Disorders and Functional Incompetence: The Causal Link

Until recent times, most states' statutes regarding incompetency equated incompetency with a mental disease or disorder (Parry, 1985; Sales et al., 1982; Sabatino, this volume). Mental disorders were described in vague terms (lunacy, idleness, madness, senility) that lack scientific meaning in today's parlance. In some cases, "advanced age" was included in state statutes as an admissible cause of incompetence. An affidavit signed by a physician was sufficient for determination of incompetence. A single sentence was often accepted, such as "I have examined the person and she is incompetent by reason of senility." (Horstman, 1975). More recently, simply the diagnosis of a mental disorder is insufficient support for a judgment of incompetence. The critical criterion is evidence of functional impairment in domains considered essential for care of self and property. For many states, a mental disorder must still be identified, but the emphasis is on demonstration that a disorder offers a causal explanation for the functional deficits observed (Nolan, 1984). The functional deficit must be the product of some underlying disabling condition over which the adult currently has no control. If the functional deficiency can be remediated or modified there may be no need for a guardian or a guardian may need to be appointed for only a limited time span necessary for the remediation. Consider, for example, the need for differential decisions when memory problems are due to Alzheimer's disease, a progressive, irreversible dementia, versus due to reactive depression, a condition that is susceptible to treatment and is typically remediable. At its best, causal inference involves (a) demonstration that functional deficits can be logically related to a specific underlying disorder, and (b) supporting evidence that can rule out other possible explanations.

Functional deficits and measures of mental ability.

Recent legal writings have called into question efforts to draw inferences regarding functional level from data based on neuropsychological exams or intellectual ability measures (Altman & Parmelee, 1992). Grisso (1986, p. 16) states that "the expert's inferences about functional abilities specific to the legal competencies (paying bills, understanding police warnings) when based on these more general observations may be no more than common sense or speculation of which nonexperts are fully capable when they are provided with the same information."

However, my recent research as well as that of others, suggests that the legal scholars are in danger of "throwing the baby out with the bath water" when they take the position that important inferences regarding functional ability cannot be drawn from intellectual ability data (Camp, Doherty, Moody-Thomas & Denney, 1989; Cornelius & Caspi, 1987; Schaie, 1987; Willis et al., 1992). In our own work we have assumed a hierarchical relationship between the basic intellectual abilities that have been traditionally studied by psychologists and the functional tasks associated with daily living that are the concern in judgments of legal competency (Willis & Marsiske, 1990; Willis & Schaie, 1986, 1993). As was illustrated with the decision-making model discussed above (Figure 3.1), we assume that basic mental processes are necessary, but not sufficient, determinants of functional competence. Given that everyday tasks are complex, we assumed that performance on a given task requires a unique constellation of mental abilities.

The question for us has been how well could we predict an older adult's performance on critical everyday tasks if we had information on their performance on a number of mental ability measures. We assessed functional abilities by examining older adults' performance on tasks related to each of the IADL domains discussed previously (see Table 3.2). In our first study, we examined whether intellectual abilities assessed at one point in time could predict older adults' performance on functional abilities 7 years later (Willis et al., 1992). Approximately 67% of the individual differences in functional abilities could be accounted for by performance on intellectual processes 7 years previously (Willis et al.,

1992). We have replicated these findings in subsequent research studies (Diehl, Willis, & Schaie, 1995; Willis & Marsiske, 1990).

Research on the relationship between basic mental processes and functional abilities has several important implications for making judgments regarding legal competence. First, findings from this research provide information on the specific types of mental abilities that underlie functional competence. Second, prior longitudinal research on these mental abilities (Schaie, 1990) provides the best predictions available regarding what to expect in the future—what trajectory of functioning is to be expected given current level of performance. Third, there has been over a decade of research on the modifiability of these basic abilities and on the individual difference variables associated with remediation (Schaie & Willis, 1986; Willis, 1987). Findings from this research provide important information on what types of interventions might be profitable and with what types of individuals.

Education, mental disorders, and competency.

It might be argued that the presence of a mental disorder in combination with functional deficits should satisfy the causal question. However, the functional deficit may have predated the organic condition, highlighting the importance of determining the *premorbid functional competency* of the older adult.

There has been little attention in the legal literature to the moderating effect of individual difference variables on functional competence, even though individual difference variables are well known to have a major influence on cognitive functioning (Schaie, 1989, 1990). As noted above, educational level is significantly related to cognitive functioning throughout the life course. Recently, the influence of education on the diagnosis and progression of dementias, such as Alzheimer's disease have become of increasing concern (Uhlmann & Larson, 1991; Wiederholt et al., 1993). The important issue for those involved in guardianship cases is whether functional deficits are attributable primarily to low educational level, to a mental disorder, or to a combination of these factors.

Figure 3.3 presents the proportion of everyday problems solved correctly on our measure of functional ability for a nondemented group of elderly, stratified by age and educational level. Note that subjects with less than 12 years of education are functioning at a significantly lower level than those with average or higher levels of education. The old-old

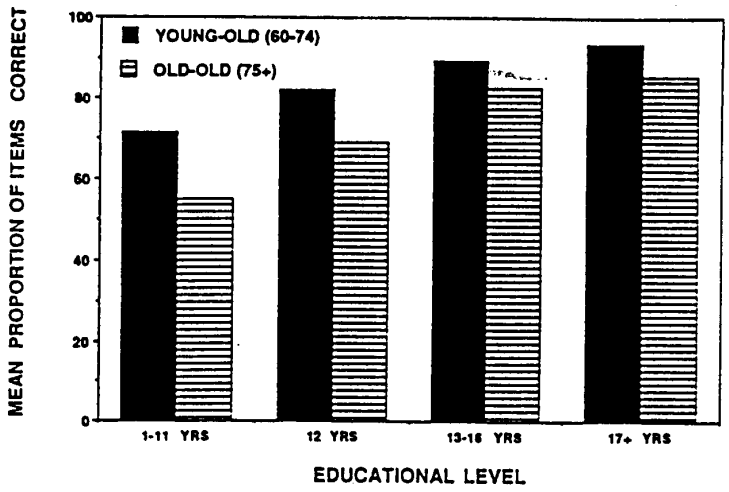

Figure 3.3. Proportion of everyday problems items answered correctly: Nondemented elderly by educational level.

(75+ years) with 1–11 years of education are particularly disadvantaged and may be said to be at cognitive risk, although having no organic impairment.

The graph in Figure 3.4 presents data on the same task for nondemented and community-dwelling Alzheimer's patients. The combination of low level of education plus an organic impairment results in serious deficits in functioning. However, given the previous data (Figure 3.3) on the low level of performance of the nondemented old-old with low levels of education, it is likely that comparably educated Alzheimer's patients were functioning quite marginally even prior to diagnosis of an organic impairment. Given the significant relationship between education and almost all measures of cognitive function, the increased risk of misdiagnosis for a dementia in an older adult with low educational and socioeconomic status should be a major concern in competency judgments (Wilson, Grant, Witsey, & Kerridge, 1973). On the other hand, Alzheimer's patients with high levels of education may be competent to engage in some forms of decision making early in the disease progression.

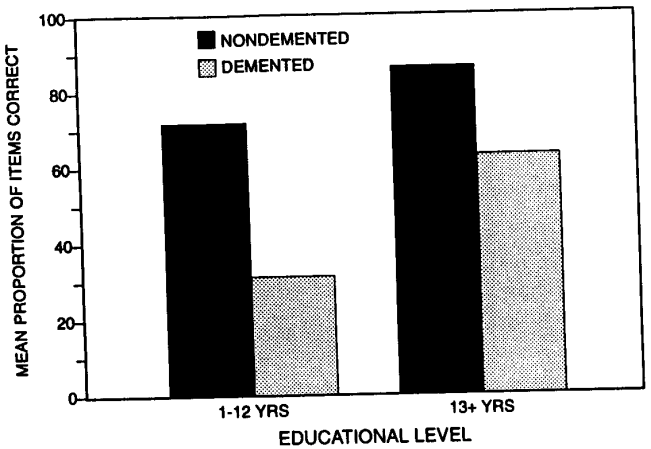

Figure 3.4. Proportion of everyday problems items answered correctly: Nondemented elderly and Alzheimer's elderly by educational level.

Functional Abilities: The Role of Environmental Context

The elderly do not live in a vacuum and, thus, competence cannot be considered without taking into account the environment in which they function (Lawton, 1982; 1987). Grisso (1986) and others have argued that the environmental context is critical in defining which specific functional abilities are most salient in legal competency judgments. The term environmental context refers to the external situations to which the older adult must respond. Different contexts require different functional abilities. The legal system cannot assess functional abilities without taking into consideration the environmental context in which these abilities are required.

The gerontological literature (Lawton, 1987) has defined the sociocultural context to include both the physical and the social environment in which the individual must function competently in order to maintain independence. The physical environment includes factors such as geographical location, climate, and architectural features of facilities; characteristics of the physical environment influence the types of tasks required to function independently in that context. For example, functional abilities associated with independent living would be expected to

vary whether the older adult lived in an urban versus rural environment and/or in inner city or suburbia. This distinction was made very real when we began to utilize the Lawton & Brody (1969) functional assessment measure developed at the Philadelphia Geriatric Center in inner-city Philadelphia. When we asked farm women in rural central Pennsylvania about their ability to use mass transportation, one women gently reminded us that she would have to drive 20 miles to catch a bus, and several hundred miles to use a subway system!

Likewise, the social environment plays a critical role in determining social roles and the functional abilities associated with these roles. For example, several of the IADL domains (e.g., housekeeping, meal preparation, shopping) deal with activities that traditional gender roles might define as "women's work." Although some IADL scales utilize the same items for older men and women (Lawton & Brody, 1969), gender differences in perception of competence are widely reported for the elderly in the epidemiological literature (Fillenbaum, 1985).

The sociocultural context is dynamic and ever changing; hence, the requisite functional abilities would be expected to change with the historical context. For example, use of computers in some form (e.g., ATM machines, microwaves, VCRs, programmable phones) has become quite pervasive. What is of interest is the selective adoption by older adults of computer-driven technologies. For example, most senior citizens own and use microwaves, but fewer than one third use an automatic teller machine.

An important question is what criteria are to be used in determining the functional abilities considered most salient in a given context. The professionals and/or social service providers that work directly with the elderly are on the "front line" and often are involved in making decisions (often by default) regarding competency and functional abilities. For example, it is frequently service providers such as senior citizen directors, rehabilitation specialists, and the managers of senior citizen housing who determine whether an older adult is competent to live independently. Interestingly, there has been relatively little research on whether providers of different types of social services agree on which of the IADLs are most critical for independent living (Loeb, 1983).

As part of our program of research, we asked three different groups of providers working with the elderly (occupational therapists, managers of housing for the elderly, senior citizen center directors) and the elderly themselves to rate 75 tasks related to daily living according to how

essential competence on each task would be for independent living (Diehl & Willis, 1991). The tasks represented five IADL domains. There was considerable consensus among the different groups of service providers and the elderly regarding the relative importance of IADL domains. Management of finances and taking of medications were rated as the two most important domains by all three service provider groups and also by older adults. Shopping for necessities was rated as the least essential functional ability for independent living by all groups.

Person–Context Interaction

While the broad sociocultural context is instrumental in defining which specific functional abilities are most salient, assessment of a particular individual's competence must consider the person–context interaction. At issue is the congruence or incongruence between the elder's level of competence on key functional tasks and the complexity of the environmental demands in the immediate context (Kahana, 1982; Lawton, 1982; Lawton & Parmelee, 1990). The question is whether the individual has the level of functional ability to cope effectively in a particular environmental context.

Let us consider whether a recently widowed 80-year-old woman with severe arthritis living in a retirement community has the requisite level of competence to manage her financial affairs. Two different scenarios can illustrate how the interaction of intraindividual ability and contextual demands may lead to different conclusions regarding the level of competence required of the individual. In scenario one, the deceased husband had managed the couple's financial affairs throughout the marriage and the wife had little knowledge of how her considerable inheritance had been invested. The retirement community offered no banking or financial advisory services. The wife did not drive and her only child lived on the other side of the country. In scenario two, the deceased husband had suffered from Alzheimer's disease for a number of years and the wife had managed their financial affairs. Full banking services and financial consultation were provided at the retirement community and her only child lived in a near-by community.

The central question is one of the congruence or lack of congruence between intraindividual capabilities and the resources and demands of the physical and social environment (Drane, 1984). With regard to ability

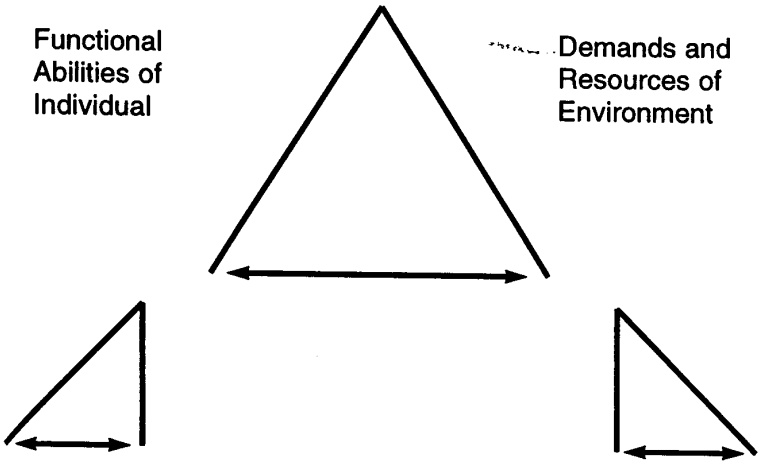

Figure 3.5. Incongruence in person–environment interaction: Three types.

to manage one's financial affairs, the size, type, and complexity of the individual's property and resources will influence the level of competence required. Figure 3.5 presents three different conditions under which there could be incongruence between intraindividual capabilities and contextual demands and resources. This is illustrated by three types of triangles. In the central triangle, the increasing lack of congruence is attributed to shifts in both intraindividual and contextual components; intraindividual capabilities decrease and contextual demands increase (or contextual resources decrease). In the left-hand triangle, the increase in incongruence is due primarily to a decrease in intraindividual capabilities, such as organic impairment or severe physical health problems; environmental resources and demands remain constant. In the right hand triangle, the increasing disparity is attributable primarily to an increase in contextual demands; for example, in scenario one the woman's functional abilities and health problems remained relatively stable but, due to the death of a spouse who had managed the financial affairs, the contextual demands increased significantly.

Judgment and Disposition

The final two characteristics of legal competency determination focus on the question of whether the incongruency between individual capacity

and environmental demands is of sufficient magnitude to warrant a finding of incompetency. A judgment of incompetence is solely the prerogative of the judicial system. Likewise, the disposition of guardianship is a decision made by the judge. Behavioral scientists and practitioners provide important information and advice to the judge in making these decisions. In addition, the clinician may play a critical role after the judgment and disposition in counseling the older adult and guardian regarding the meaning and implications of the judgment. Counseling may be particularly useful if there was disagreement among parties regarding whether the older adult was incompetent and/or who was to be appointed guardian.

FORENSIC ASSESSMENT INSTRUMENTS

The use of Forensic Assessment Instruments (FAIs) is becoming increasingly common in assessment of older adults involved in guardianship or conservatorship cases. The popularity of FAIs has increased as a result of the recent emphasis on deficits in functional abilities as the primary criteria for judgments of incompetence and the rejection of diagnosis of a mental disorder as a sufficient justification for guardianship rulings. Grisso (1986, p. 34) has described a forensic assessment instrument as "an operational definition of a legally relevant functional ability concept." Therefore, FAIs are intended to provide data that can manage the conceptual gap between legal constructs and psychological constructs.

Currently two major categories of measures to assess functional ability in the elderly are discussed in the literature. The most commonly cited type of measure is a *self-report* instrument. The second category provides an *objective* assessment of functional abilities. In the following sections, we will briefly review the gerontological literature with regard to each category of instrument.

Self-Report Instruments

In a self-report instrument, the older adult is asked to rate his or her level of competence on each of the IADL domains. There is a single question for each domain (e.g., telephone), in which the elder is asked to self-rate functional ability on a 3-to 4-point scale: "Can you use the

telephone: (a) without help, (b) with some help, or (c) not at all?" In cases in which the elderly person is incapable of answering for himself or herself, a family member is usually asked these questions. In studies using comprehensive assessment batteries, such as the Older Americans Resources and Services (OARS) (Fillenbaum, 1978; Fillenbaum & Smyer, 1981) and the Multilevel Assessment Instrument (MAI) (Lawton & Moss, undated), a summary rating across the five domains is then made by the interviewer.

This approach to assessment of functional abilities has been used in large-scale epidemiological surveys of noninstitutionalized elderly. Previous survey research suggests that 80% or more of community-dwelling elderly adults report having no difficulty in performing each of the functional abilities (Fillenbaum, 1985; Galanos, Fillenbaum, Cohen, & Burchett, 1991). There has been limited survey research on ethnic differences in level of competency. In the recent Duke epidemiological study, approximately one third of blacks and one quarter of whites reported needing assistance in one or more of the domains (Galanos et al., 1991).

Figure 3.6 shows the proportion of young-old (60–74 years) and old-old (75+ years) and the proportion of men and women who reported themselves to perform competently in each domain without assistance (Fillenbaum, 1985). The data speak to the need to be attentive to age and gender differences in considering what is normative. Comparisons of young-old and old-old indicate a smaller proportion of old-old capable of functioning independently in each of the domains. The magnitude of age differences vary by domain and are most evident for the three domains of shopping, transportation, and housekeeping; over 40% of the old-old report needing some assistance. Both blacks and whites reported the greatest limitations with regard to the domains of transportation, shopping, and housekeeping, although a higher proportion of blacks reported needing assistance in each domain (Galanos et al., 1991).

Comparisons of men and women indicate no gender difference with respect to telephone usage, taking medications, or financial management (Fillenbaum, 1985). Men report themselves to be somewhat more competent with respect to shopping, housekeeping, and traveling to locations outside walking distance. Why is there this gender difference in favor of men on some tasks (shopping, housekeeping) traditionally ascribed to women? Fillenbaum (1985) has suggested that data on physical competence and mobility do not support the rationale that these gender differ-

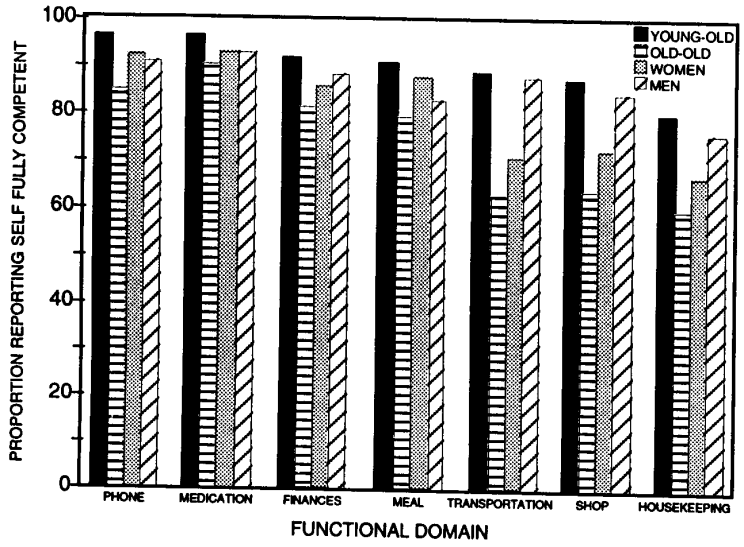

Figure 3.6. Proportion of community-dwelling elderly reporting themselves fully competent in functional domains.

ences can be attributed to differences between men and women in physical mobility. It has been argued that men and women may have different standards for housekeeping, thus resulting in more men than women reporting continuing competence in this domain.

Strengths and limitations of a self-report approach to functional assessment.

There are advantages and limitations to the self-report approach, as with any assessment procedure. At least three advantages can be noted. First, this approach is efficient, since the assessment interview can be administered in a relatively brief time period. The temporal efficiency of this approach has made it very attractive for use in epidemiological surveys in which large numbers of individuals needed to be interviewed in order to achieve representative samples. Second, the procedure does not require a highly skilled professional; technicians have been trained to administer the instrument. Third, acceptable levels of both interrater reliability and intrarater reliability have been reported.

There are also a number of limitations to the self-report approach that should be taken into account when using this method to judge competency. First, older adults tend to overestimate their level of competence when compared to ratings by professionals or to actual performance. Significant differences have been found between ratings based on clinical interviews and self-report data. Fillenbaum (1978, p. 28) writes with regard to the OARS that the questionnaire tends to give too rosy a picture, for clinicians, in personal contact with clients notice difficulties which are not so evident from questionnaire data alone.

Self-reports may reflect either over-or underestimations of functional competence. Healthy, community-dwelling elderly tend to overestimate their actual level of functioning (Ford et al., 1988). However, in impaired populations, the etiology of the disorder affects whether competence is overestimated or underestimated. In a study of geriatric psychiatric patients, Kuriansky, Gurland, Fleiss, & Cowan (1976) found that only 41% of patients evaluated their level of physical ability at the same level as exhibited on a performance test. Patients diagnosed as having an organic disorder were more likely to overestimate competence, whereas those with a functional disorder were more likely to underestimate performance.

In our own work, we have examined the relationship between healthy, community-dwelling older adults' self-ratings of competence and their performance on an objective measure of performance. Figure 3.7 presents a comparison of the proportion of older adults rating themselves as able to perform without assistance in each IADL domain versus the proportion of subjects who answered 75% or more of items correctly on an objective measure of performance. A score of 75% correct was considered to represent a relatively high level of functioning. Note that the discrepancy between perceived level of functioning and objective performance differs by IADL domain. The greatest discrepancies occur for the domains of taking medications, phone usage, and financial management.

A second limitation of the self-report approach is that each competency domain has been assessed by a single item. Reliance on a single item to assess functional ability provides little information on the specific behavioral competencies of an individual (Grisso, 1986; Willis, 1991).

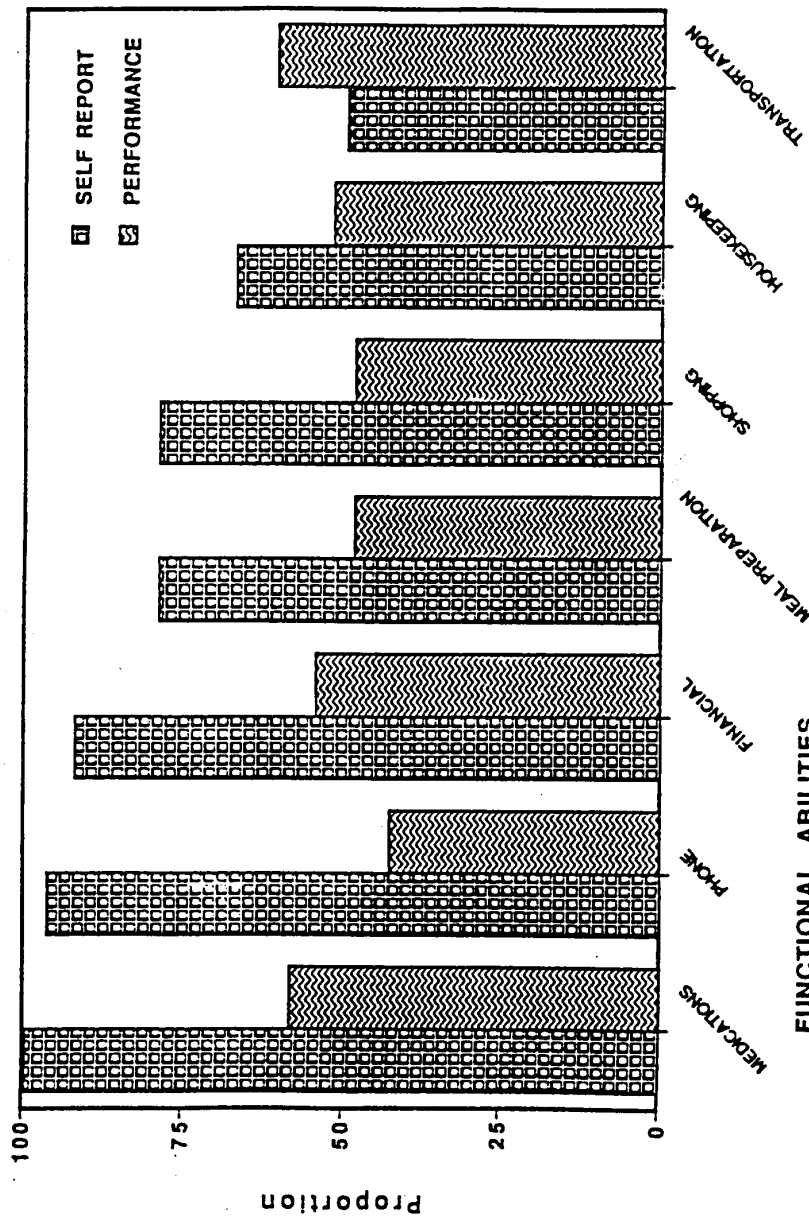

Figure 3.7. Comparison of elderly's self-report of functional competence versus performance on everyday problems measure.

There are wide individual differences in interpretations of what it means to "use the phone," "manage one's finances," or "shop for necessities" without assistance. A third limitation of this approach is that it provides little information on the perceived cause of the incapacity. Inability to use the phone may be due to sensory deficits, memory problems, or inexperience with recent information technologies.

Objective Measures of Functional Ability

Objective measures of functional abilities are fewer in number and tend to have been developed fairly recently. Examples of objective measures include the Community Competence Scale (Loeb, 1983), the Everyday Problems Test (Diehl et al., 1995; Marsiske & Willis, 1995; Willis & Marsiske, 1992), and the Direct Assessment of Functional Status Scale (Loewenstein et al., 1989). These measures involve presenting the elderly adult with specific tasks of daily living (e.g., telling time, counting change, addressing an envelope, determining medication information from a prescription drug label, ascertaining the amount to be paid from a phone bill). The adult's response to the tasks is assessed objectively by: (a) having the adult verbally indicate the solution to the task or (b) observing the adult's behavioral response.

Strengths and limitations of objective measures.

The major strength of these measures is that they provide an objective measure of competence with respect to the functional abilities associated with guardianship cases. They focus primarily on the higher order, more complex functions associated with the IADL domains, rather than with the more basic self-care, or ADL, domains. Second, each functional domain is assessed by several items, compared to a single item in self-report measures. For example, in our Everyday Problems Test, tasks assessing the domain of financial management include (a) comparing benefits for several medigap insurance plans, (b) completing a portion of a tax return form, and (c) determining what form of medical assistance one is eligible for from various plans. Assessment of an individual's performance on multiple tasks related to a functional domain is critical in order to assess competence with greater accuracy and reliability. Also, the measures make clear the types of tasks on which competency is

being judged, in contrast to the very subjective nature of the self-report questions. Finally, these measures have high face validity, since they focus on tasks encountered by most elderly in their daily lives.

However, a number of limitations of the measures need to be noted. Some of the limitations are due to the recent development of these instruments and the need for time to complete ongoing data collection related to them. There is first the question of whether the problems being assessed represent the most critical or essential tasks required for independent living. What are the essential tasks on which competence is required in order to manage one's finances? One may answer that the tasks will vary with the individual and the environmental demands. However, the authors of the tests have taken the position that there is a subset of critical tasks that can serve as the core for assessing competence in each domain; these tasks can then been supplemented with tasks unique to an individual case. How then should we go about determining this core of critical tasks?

Objective assessment comes at a cost in terms of the time to administer the instruments. Task performance is usually self-paced by the elderly, since the focus is on assessment of behaviors approximating how the elderly perform these tasks in their everyday environment. Thus, administration of the Community Competence Scale requires 60–90 minutes. Administration of the Everyday Problems Test ranges from 25 to 90 minutes, depending on the version of the test administered. The length of test administration is a major factor in assessing cognitively impaired elderly who typically have short attention spans and a low tolerance for ambiguous or stressful conditions, such as might occur in a testing situation. An additional concern is the need to develop norms for these objective measures on larger and more representative samples. Since the objective measures focus primarily on the cognitive demands of everyday tasks, it is critical that norms stratified by age and education be developed.

Issues in Forensic Assessment

As the preceding discussion has illustrated, the development of forensic assessment instruments for use in guardianship cases is in its infancy. In some cases, existing measures, developed for other purposes, such as assessment of eligibility for health and social services, have been adopted

(Fillenbaum, 1985; Kane, 1993). Recently, several new measures specifically targeted toward functional assessment have been presented in the literature; virtually all these measures are quite new and the instruments are in need of further development. There are several issues that need careful consideration as measurement development continues (Willis & Schaie, 1994).

Construct validity: The search for the gold standard.

Perhaps the most salient question with respect to any assessment instrument is, "Does the instrument measure what it is intended to measure?" In guardianship cases, the question is whether the FAI assesses the older person's competence with respect to the functional ability in question (Schaie, 1978). The construct validity of an instrument has traditionally been assessed with respect to a "gold standard." For example, in medicine, a test or battery of tests becomes accepted as the gold standard for the diagnosis of a disease or health condition. The effectiveness of alternative diagnostic procedures are assessed in comparison to the gold standard.

A critical problem in functional assessment is that there is no agreed upon gold standard. Epidemiological studies have largely depended upon the self-report of the adult; limitations of this approach were discussed above. Clinician ratings have often been cited in validity studies, but the criteria employed by the clinician are often vague and vary from clinician to clinician. A leading scholar in geriatric assessment wrote recently that clinical judgment still plays a major role in what is sometimes described as the "*art* of diagnosis" (Kane, 1993, p 27; underline added).

In guardianship cases, the problem appears to be further complicated by two opposing trends:

1. Legal statutes tend to provide only very vague definitions of the construct (i.e., functional competence) upon which a judgment is to be made; but
2. there is a movement toward guardians being appointed in fairly limited domains of decision making (Parry, 1985).

For example, the older adult may be judged competent to make decisions regarding everyday financial decisions, but be considered incompetent to manage financial assets. If guardianship decisions are to be made

regarding fairly narrow domains of competence, then assessments need also to be targeted to quite specific domains of behavior.

Global versus function-specific assessment of competence.

In the preceding discussion, we have suggested that functional assessment instruments may need to focus on specific areas of competence, given recent trends in guardianship judgments. However, both existing and newly developed measures of functional competence often rely on a summary or global score. For example, although the OARS examines perceptions of competence in five IADL domains, the most commonly reported finding is a summary score of the total number of activity domains with deficits. Likewise, new functional assessment instruments also often involve summary scores (Loeb, 1983; Loewenstein et al., 1989). Summary scores, from a measurement perspective, are often the most appropriate level to report assessment findings, since specific abilities (e.g., ability to balance a checkbook, comprehension of a medicine label) are commonly assessed with a single item, and competencies cannot be reliably measured with a single item. However, the congruence between the specificity of assessment of competence and the particular domains of activity over which a guardian is appointed needs further careful consideration.

Measurement of environmental demands and resources.

Competence is considered to involve an interaction between the individual's level of functional abilities and the demands and resources in his or her environment. While there has been some progress made in development of measures to assess the functional abilities of the individual, much less attention has been given to assessment of the environment. Although consensus appears to be emerging on some of the critical functional abilities associated with competency, there has been much less conceptual work or research on defining the dimensions of the environment associated with competency (Krauss & Popkin, 1989; Lawton, 1987).

Measures such as the OARS (Fillenbaum, 1978) have enumerated categories of services, including: transportation, social/recreational, employment, educational, mental health, and personal care. There appears to be a primary focus on services provided by formal support mechanisms (agencies, community programs). Less emphasis is given to the informal services that may be provided by friends and relatives, although most caregiving in our society is provided by an informal network (Horowitz, 1985).

An alternative approach to assessment of environmental demands has been proposed by Scheidt and Schaie (1978), who developed a taxonomy of competency-requiring situations encountered by community-dwelling elderly adults. Elderly judges rated 300 everyday situations according to a set of situational attributes derived from the social-psychological literature. Four attribute dimensions were identified that characterized these situations: social-nonsocial; active-passive, common-uncommon, and supportive-depriving. Older adults were then asked to rate their perceived individual level of competence with regard to situations representing these dimensions. The two attribute dimensions that most influenced the elderly in their perception of their own competence in a given situation were: common-uncommon and supportive-depriving. That is, the elderly perceived themselves to be significantly more competent in situations that may be characterized as being common or as being supportive. They perceive themselves to be much less competent in situations characterized as being uncommon or depriving. Gender differences also affect perceptions of situational competence. Women perceived themselves as more competent than men in social, common, and supportive situations. Again, the findings on gender-based differences in situations of perceived competence are quite congruent with those from the traditional sex role literature. A substantial literature indicates greater concern among females for social competence, for acquiring the approval of others, and for avoiding competitive conflict situations.

SUMMARY

In this chapter we have considered the geropsychological literature related to four characteristics of legal competence: focus on functional abilities, causal linkage between incapacity and mental disorder, role of the general environmental context in defining the critical functional domains, and the congruence between the individual's competence and environmental demands. Most older adults are not totally incompetent, and thus guardianship decisions often are concerned with the "least

restrictive alternative." The task is to determine the specific domains of functional abilities in which the older adult is deficient and for which a guardian needs to be appointed. Since most legal statutes describe only very general capacities, a major challenge for those involved in assessment and judgment of competence is to define the domains of functional abilities associated with living independently in our society. We suggest that prior research on the instrumental activities of daily living (IADLs) may be particularly useful to those concerned with guardianship issues.

Competence represents the older adult's potential or capacity for making decisions necessary for care of oneself and maintenance of one's property. Competence is not necessarily reflected in the older adult's everyday behavior. Competence addresses what the individual is able to do, not what he or she actually does. Likewise, competence focuses heavily on the older adult's mental ability to make critical decisions regarding care of self and management of property; it does not necessarily require that the older adult be physically able to carry out the required tasks of daily living. Given this perspective on functional competence, we discuss the multiple components that may be involved in decision making. Basic mental abilities and domain-specific knowledge bases are necessary components in decision making, but are not sufficient for generation of adequate problem solutions. There must also be consideration of the elderly individual's perception of the social and physical environment and beliefs and preferences regarding alternative problem solutions.

We present data on longitudinal change in problem-solving performance for elderly adults with no known pathologies. Data on normative change in decision-making competence can serve as a baseline for assessment and for decisions regarding elderly persons who suffer from mental disorders. While age-related decline in young-old age is modest, the rate of average decline increases in old-old age. At all chronological ages, elderly people with below average educational level function at a lower level. Our research suggests that the educationally disadvantaged elderly in very old age are increasingly likely to need assistance in everyday decision making, even though they do not suffer from a specific mental disorder.

It may be argued that the presence of a mental disorder in combination with functional deficits should be sufficient grounds for guardianship decisions. However, the functional deficit may have predated the organic condition, highlighting the importance of determining the premorbid

functional competence of the older adult. Given the significant relationship between education and functional competence, elderly persons with low socioeconomic status may have functioned marginally even prior to diagnosis of an organic impairment. Increased risk of misdiagnosis for dementia in poorly educated older adults is also a concern in competency judgments.

The elderly do not live in a vacuum, and thus competence cannot be considered without taking into account the environment in which the elderly function. Both the physical and social environment need to be considered in determining which functional abilities are most salient for independent living. An important issue is what criteria to use in determining the functional abilities considered most salient in a given context. Family members, clinicians, social workers, legal professionals, and the elderly themselves may disagree regarding the most salient functional domains for defining competence.

While the broad sociocultural context is instrumental in defining which specific functional abilities are most salient, assessment of a particular individual's competence must consider the congruence or incongruence between the person's capabilities and the demands and resources in the immediate environment. Person–environment incongruence can occur in three ways: decreasing individual competence and increasing environmental demands, stability in individual competence but increasing environmental demands, and decrease in individual competence but stability in environmental demands.

The second part of this chapter deals with the use of forensic assessment instruments (FAIs) to assess older adults' competence to live independently. Two major types of measures are currently in use: self-report instruments and objective measures. Both types of measures have strengths and limitations. Advantages of self-report instruments are that they can be administered in a relatively brief time interval and they can be administered by trained technicians rather than highly skilled professionals. A major limitation of the self-report approach is that older adults tend to overestimate their level of competence when compared to ratings by clinicians or compared to actual performance. A second limitation is that each competency domain is traditionally assessed by a single item and there is little information on the source (physical, mental, social) of the perceived deficit in competence.

Most objective measures of functional ability have been developed fairly recently and thus psychometric information on the instruments is

limited. A major strength is that they provide an objective measure of functional ability. They tend to focus on higher order, more complex tasks of daily living. A limitation of these measures is that they require more time to administer than self-report instruments. Due to the recent development of the measures, there is limited normative data, especially with respect to individual difference variables, such as age, educational level, or ethnicity.

Finally, we discuss three issues in the development and use of forensic instruments that need to be addressed. First, there is the issue of the construct validity of the instruments and the lack of a "gold standard" by which to evaluate recently developed measures. Second, most measures involve a summary score that provides information on overall functional competence. However, recent trends are toward appointing guardians for specific functional domains. Forensic assessment instruments need to provide information on competence in the specific domains of interest in guardianship cases. Third, there has been even less effort expended toward development of measures to assess the environmental demands and resources. Assessment of the environmental demands, as well as the capabilities of the individual, is critical if incompetence is seen to result from incongruence between the person and the environment.

Our review of the legal and geropsychological literatures suggests that each field has much to contribute to the other. The shifting age structure of our society makes the need for interdisciplinary exchange all the more urgent. Functional competence in old age is the foremost concern of the elderly themselves and will become an increasing societal concern as the baby boomers reach old age early in the next century. The joint efforts of the legal and psychological communities are needed to meet the challenge.

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