1-1-2012

Mental health expert testimony: legal professionals' preferences in criminal responsibility evaluations

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Mental Health Expert Testimony: Legal Professionals’ Preferences in
Criminal Responsibility Evaluations

by

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Presented to the Faculty of the
Graduate Department of Clinical Psychology
George Fox University
in partial fulfillment
of the requirements for the degree of
Doctor of Psychology
in Clinical Psychology

Newberg, Oregon
October 2011
Mental health expert testimony: Legal professionals' preferences in criminal responsibility evaluations

by

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has been approved

at the

Graduate School of Clinical Psychology

George Fox University

as a Dissertation for the PsyD degree

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Criminal responsibility evaluations (CRE) represent the most substantial link between the legal and psychological communities. As the number of CRE conducted each year continues to increase, it is imperative that skilled mental health experts provide vulnerable defendants with sound assessments. Research has shown that mental health expert testimony has a powerful impact on the outcome of criminal responsibility cases. The objective of this study was twofold, it sought to: (a) Identify the aspects of testimony legal professionals perceive as being most important in a criminal responsibility evaluations; (b) Determine the discipline of mental health expert witness most preferred for each element of testimony. The major findings of this study were: (a) legal professionals’ preference for psychologists as mental health expert witnesses, (b) there was agreement between legal professionals’ ratings of the most important items of testimony and the type of mental health expert witness preferred to testify.
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Chapter 1

Introduction

Evaluations of criminal responsibility and competence represent the most significant overlap between the legal and mental health communities. The two evaluations, Criminal Responsibility Evaluations (CRE) and Competency to Stand Trial (CST) have a similar purpose, which is to ensure fair treatment of individuals; yet the evaluations answer slightly different questions. The CST assessment is a legal due diligence that answers the question: does the defendant possess the ability to understand and participate in their legal defense? Whereas, the criminal responsibility evaluation explores the question commonly known as the insanity defense: what was the defendant’s mental status at the time of the crime? (Reid, 1998; Zapf & Roesch 2009). Given that CST evaluations are included in the CRE, the relevant testimony overlaps as well. Stone (1975) called CST assessments, “the most significant mental health inquiry pursued in criminal law” (p. 200). Estimates of the prevalence of CREs conducted to investigate an insanity plea vary from 0.1% to 8% of felony cases (Melton, Petrila, Poythress, & Slobogin, 1997). These values correlate with the approximate 2% to 8% of felony defendants assessed for CST (Bonnie, 1992; Hoge et al., 1997). In 1991, it was estimated that 30,000 CST evaluations were conducted with defendants annually in the United States (Wrightsman, Neitzel, & Fortune, 1998). By the year 2000, this estimate increased to approximately 600,000 (Bonnie and Grisso, 2000). Roesch, Zapf, Golding, and Skeem (1999) attribute this dramatic increase to the growing number of felony arrests in the United States. Judges in criminal court consider the
results of CST evaluations more often than any other evaluation (Bonnie & Grisso, 2000). Of defendants assessed for competency, 70% to 90% are deemed competent (Nicholson & Kugler, 1991; Roesch & Golding, 1980; Roesch et al., 1999). These evaluations, conducted by mental health professionals, represent the most substantial connection between the psychological and legal community.

**Legal Standards Guiding Criminal Responsibility Evaluations**

The ethical roots of CREs originated from England’s 12th century church, which established the concept of *mens rea*, meaning “guilty mind” or “evil intent” (Zapf, Zottoli, & Pirelli, 2009). This old world idea remains integrated into today’s legal standards. Mental health and legal professionals alike use *mens rea* as they seek to confirm a defendant’s ability to both comprehend and control their actions when the crime occurred (Stafford & Ben-Porath, 2002). Criminal responsibility evaluations have a rich history that dates back to 18th century England. This background informs current legal practices. At that time, a defendant was considered incompetent to stand trial if he was found not to know more than, “an infant, than a brute, or a wild beast” (Wrightsman et al., 1998). In 1843, Daniel M’Naghten, a man diagnosed with paranoia, murdered the man he believed to be the British prime minister. The determination in this case became the international standard for insanity in both the United States and Britain, known as the M’Naughten standard (Rogers & Shuman, 2005). In a 2003 survey, Gee concluded that 24 states use a form of the M’Naughten standard. The standard states:

> The jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defense on the ground of insanity, it
must be clearly proved that, at the time of the committing of the act, the party accused as labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong (House of Lords, 1843, Ch 7).

Over a century later, in 1954, the United States Federal Courts made another epochal ruling in *Durham v. United States*. This enacted a new standard that “an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect” (1971), pp. 874-875). Judge Bazelon’s standard, the product rule, sought to encourage expert witnesses to provide the court with the empirical evidence relevant to the case. Courts felt the M’Naghten standard shifted the final decision away from the judge and jury and transferred it to the expert witness (e.g. *Holloway v. United States*, 1945; Stafford & Ben-Porath, 2002). The impact of the Durham decision was significant because it generated a surge of mental health expert witnesses in the courtroom to fulfill the requirements of this new standard.

Although many states adopted the *Durham* rule, the legal community found it to be inadequate and lacking in clarity; which served to increase the questions around criminal responsibility rather than providing answers. One illustration of the confusion occurred when defendants with chemical dependency issues argued that they fell into the category of “mental defect” and began to plead not guilty for reason of insanity to avoid the penalty for their crimes (Wrightsman et al., 1998). The era of the *Durham* standard was characterized by inconsistency and confusion in cases involving criminal responsibility.

In response to the problems of the *Durham* standard, the Bazelon court annulled the *Durham* standard in 1972 by a unanimous vote, enacting the American Law Institute standard
(ALI; Zapf et al. 2009). ALI is the product of a 1962 study funded by the Rockefeller Foundation (Rogers & Shuman, 2005. A form of this rule is currently in use in federal and about half of all state courts (Rogers, 2008). Most jurisdictions in the United States have incorporated at least one paragraph into their standards on insanity rulings (Stafford & Ben-Porath, 2002). This code holds that a defendant is not responsible for their crime if, “at the time of such conduct as a result of mental disease or defect, [lacks] substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law” (Zapf et al., 2009). ALI addresses both “cognitive and volitional prongs,” adding another facet to the face of criminal responsibility evaluations (Rogers, 2008, p. 110).

**Evaluations for Competency to Stand Trial**

As described earlier, criminal responsibility evaluations also include an assessment of CST. CST evaluations determine if a defendant possesses the necessary faculties to work with their attorney and participate in court proceedings. In 1960, the seminal U.S. Supreme Court case *Dusky v. United States* established the legal standards of competency. The court stated that the defendant must possess “sufficient present ability to consult with his lawyer with a reasonable degree of factual understanding, and whether he has a rational as well as factual understanding of the proceedings against him” (p. 788). In 1975, the court further clarified tangible measurements of competency, in *Drope v. Missouri*, ruling that the defendant must “assist in preparing his defense” (p. 171). Thus, CST does not simply involve assessment of cognitive abilities and psychopathology but a rational understanding of cause and effect. Additionally, the examiner must substantiate a causal link as to why any identified impairments would detract from the defendant’s legal competence (Golding, 2008). As the complexities of the law increased, the
expertise required to determine criminal responsibility and provide proficient testimony grew as well.

**Evolution of Competency and Criminal Responsibility Assessments**

The first wave of forensic competency assessments began with Robey’s 1965 CST checklist for psychiatrists, which sought to measure the defendant’s understanding of court processes (Roesch et al., 1999). This development irreversibly changed competency and criminal responsibility evaluations. This was the first standardized tool of its kind specifically designed for the forensic evaluation of competence. Previously, mental health professionals did not have standardized methods on which to base opinions of competence or criminal responsibility (Roesch et al., 1999). Inter-rater reliability in evaluations has increased as standardized assessments have become available and widely used (Roesch et al., 1999). The Harvard Laboratory of Community Psychiatry developed the Competency Screening Test in 1971 (Lipsitt, Lelos, & McGarry, 1971) followed by the Competency Assessment Instrument in 1973. Previously, mental health professional’s evaluations were primarily diagnostic interviews, if the defendant was determined to be in a paranoid or psychotic state, the defendant was found incompetent to stand trial (Rogers, 2008). With the advent of empirically based measures, evaluations were able to detect more subtle measures of competence.

Almost 20 years later, publication of the second waves of forensic assessments began in the 1980s. The number of forensic tests in which evaluators must maintain proficiency dramatically increased. (See Appendix A for an abbreviated list). This has also served to increase the expertise required to administer these tests and determine competency and criminal responsibility. Two-thirds of forensic psychologists and psychiatrists agreed that psychological
assessment is “essential” or “recommended” when conducting criminal responsibility evaluations in a 1995 survey (Borum & Grisso, 1995). Many experts consider criminal responsibility evaluations the most difficult assessments in the forensic arena, due to the retrospective nature of much of the work and the need to establish the cohesiveness of the defendant’s testimony with multiple measures (Rogers, 2008).

**Mental Health Expert Witnesses Testimony**

A judge is required to mandate the completion of an appropriate assessment, in the presence of a valid concern of a defendant’s competence (Rogers, 2008). Federal Rules of Evidence 702 (FRE), defines the criteria of an expert witnesses as “qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion” (Federal Rules of Evidence 702). Psychologists and psychiatrists are common fixtures in the courtroom in criminal responsibility cases (Perlin, 1977). A 2002 survey of federal civil court judges found that medical and mental health experts testified in about 40% of trials, more common than any other discipline (Krafka, Dunn, Treadway Johnson, Cecil, & Miletich, 2002).

After an evaluation is completed, experts most commonly testify in court when the ruling is controversial (Evans, 1987). Testimony in criminal responsibility cases generally focuses on the content of the expert’s written report. Key components of these reports includes: “case and referral information, notification information, summary of alleged offense(s), data sources, background information, clinical assessment, forensic assessment, summary, and recommendations” (Zapf & Roesch, 2009).

In 2001, Redding, Floyd, and Hawk conducted a survey of defense attorneys, district attorneys, and judges in Virginia, to determine the elements of a criminal responsibility
evaluation they considered the most important. Overall, the study found that all three groups were most interested in a clinical diagnosis, followed by an opinion on if the defendant’s condition met the legal standard for mental illness. They were least interested in testimony on statistics and actuarial data. Prosecuting attorneys and judges were in greater agreement in the elements of testimony they prefer to receive from mental health expert witnesses. Defense attorneys and prosecuting attorneys were most likely to differ. In addition to the content of testimony, personal characteristics of expert witnesses carry a great deal of weight in the courtroom.

In Shuman, Whitaker, and Champagne’s 1994 survey of judges’ opinions of expert witnesses, 95% of judges reported that experience was very important, 68% endorsed education as very important for an expert witness. Only 5% reported that professional publications were very important. Thirty-one percent reported experience and objectivity as the most important factors, more so than the content of the testimony, demeanor of the witness, or reputation or credential of the witness. A study completed by Mossman and Kapp (1998) found that 91% of judges and attorneys who participated in the study rated the knowledge of mental health expert witnesses as “essential or very important.” Eighty-five percent of participants cited skilled communication as the most desirable quality in an expert witness. Melton, Petrila, Poythree, & Slobogin (1997) identified three factors the influence the perceived credibility of a witness: “expertise, trustworthiness, and dynamism.” Very little research has been conducted on the preference for psychologists or psychiatrists when testifying on specific aspects of expert witness testimony in criminal responsibility evaluations.
Research has shown the testimony of these professionals has a critical impact on the verdict. Mental health expert witnesses have a profound impact on the outcome of criminal responsibility and CST cases, given the frequent consensus between judges’ verdicts and the findings of mental health expert witnesses. (Melton, Petrila, Poythress, & Slobogin, 1987; Steadman, 1979). A recent study conducted by Zapf, Hubbard, Cooper, Wheeles and Ronan (2004) in Alabama found a 99.6% rate of agreement between expert witnesses and court decisions in CST cases. Out of 328 cases in this study, in only one instance did the courts make a ruling against an expert witnesses’ opinion. These results are consistent with Freckelton’s 1996 study in which he found 91% agreement between the court’s rulings and the expert witnesses’ testimony and past studies. It is crucial to have a thorough examination conducted by an expert to ensure accuracy in the legal process. Given the influence expert testimony carries, it is imperative that the experts who testify in these cases are well trained and experienced in forensic work.

**Perceptions of Difference between Psychiatrists and Psychologists**

Research has shown that the legal community has varying perceptions of the differences of expertise between psychologists and psychiatrists. Researchers have hypothesized that the difference in perception is likely due to the historical standard of physicians acting as expert witnesses in legal matters, establishing an affinity for the medical model in the legal community (Melton et al., 1997). British forensic psychiatrists undergo training in “therapeutics” whereas American forensic psychiatrists typically do not. Given the English roots of American insanity laws, it likely that the preference for psychiatrists transferred over from the traditional English system, despite the significant differences in training emphases (Gunn, 2004). The differences in
perception of mental health professionals has impacted the preference for expert witnesses in the courtroom.

The preference of mental health expert witnesses varies depending on the subject of the testimony and the role of the legal professional in the courtroom. Leslie, Young, Valentine, and Gudjonsson (2007) conducted a study of criminal barristers and found some key differences in the way psychologists and psychiatrists were perceived. Participants in their survey reported the key difference between clinical psychologists and psychiatrists was that psychologists’ work focuses on “personality factors” such as “IQ and personality disorders” and that psychiatrists' work is “exclusively with mental illness” such as schizophrenia (p. 404). Twenty-two percent of respondents reported the expertise of psychiatrists as being more useful than that of psychologists while only 8% reported the opposite. Additionally, participants reported having contact with psychiatrists twice as often as psychologists. However, differences in jurisprudence training standard could limit the generalizability of the findings to the United States (Gunn, 2004).

Redding et al. (2001) found similar results in their study. Sixty-eight percent of participants ranked psychiatrists as most preferred in a criminal responsibility evaluation; 31% reported a preference for psychologists. Gatowski et al. conducted a nationwide survey in 2001 to explore judges’ opinions of expert evidence. Thirty-eight percent of participants consider testimony from psychologists to be scientific evidence while 64% perceive psychological research as scientific evidence. LaFortune and Nicholson (1995) conducted a survey of attorneys in Oklahoma asking them to rank their preference of mental health professionals to act as an expert witness in a competency evaluation. Sixty percent of respondents endorsed psychiatrists
as their first choices, one-third preferred doctoral level psychologists. Despite this preference, participants did not report a significant difference in the perceived validity of the assessments completed by the two disciplines.

_Jenkins v. United States_ (1962) solidified psychologists’ place in the courtroom, ruling that psychologists could act as experts in court, despite pushback from the American Psychiatric Association (Goldstein, 2007; Pacht, Kuehn, Bassett, & Nash, 1973; Petrella & Poythress, 1983). Over the past 50 years, trends in state law have been gradually aligning with this ruling. Frost, de Camara and Earl (2006) found that six states call for forensic evaluations to be completed by psychiatrists and an additional five states require psychologists work alongside a psychiatrist to complete an evaluation. Forensic psychologist G. H. Gudjonsson has proposed that psychologists and psychiatrists work jointly to yield optimal results (Gudjonsson & Haward, 1998). These results are congruent with a similar 1997 study of state and territory’s requirements for mental health expert witnesses (Farkas, DeLeon, & Newman, 1997). This study found that 100% of participants allow psychiatrists to act as expert witnesses in competency and criminal responsibility evaluations; while only 90.4% of states allow psychologists and 36.5% allow “non-psychiatric physicians” to testify in these cases. A 1983 survey found that judges in Michigan have the greatest preference for psychiatrists when the expert is testifying on a defendant’s sanity (Poythress, 1983).

Early research, Prelin (1977) suggested that testimony offered by psychologists could be perceived as “second rate”. However, research conducted found that practice did not support this postulation. A 2004 study that compared the thoroughness of 5,175 evaluations of sanity did not find a significant difference between the work completed by psychiatrists and psychologists
Mental Health Expert Testimony

(Warren, Murrie, Chauhan, Dietz, & Morris, 2004). Petrella and Poythress (1983) found the assessments completed by psychologists to be more thorough than those of psychiatrists.

Attorneys frequently believe that multiple expert witnesses in the courtroom nullify one another (Gutheil & Simon, 1999). One study found that when a psychologist and psychiatrist testified against one another, the ruling sided with the psychologist in 82% of the cases. In explaining their results, the authors cautioned that this data could be confounded by the fact that the majority of the psychiatrists in this sample were hired privately and could consequently be perceived by the judge as biased whereas the psychologists were furnished by the state (Petrella & Poythress, 1983).

**Purpose of Research**

This study proposes to identify and examine legal professionals’ views of mental health expert witnesses in the context of criminal responsibility evaluations. With the objective of: (a) Identify the aspects of testimony legal professionals perceive as being most important in a criminal responsibility evaluations; (b) Determine the discipline of mental health expert witness most preferred for each element of testimony.
Chapter 2

Methods

Participants

Participants consisted of three groups of legal professionals in the state of Oregon. Different procedures were required to access each of the groups of legal professionals, judges, district attorneys and defense attorneys. One of Oregon’s chief justice’s was contacted and agreed to distribute the survey via e-mail to Oregon’s 173 circuit court judges. The e-mail contained a summary of the purpose of the study, a summary of the study and a link to the online platform for survey completion. A follow-up e-mail was sent out two weeks later. The response rate for this group was 21.3%.

To obtain a sample of district attorneys, a list was obtained from the Oregon State Bar Association containing the contact information for all of the legal professionals registered in the Criminal Law Section for the year 2011. The 78 district attorneys registered in this section were contacted to participate in this study. Participants were mailed a cover letter containing a summary of the study, a copy of the survey, and a pre-addressed, stamped return address envelope. Additionally, if an e-mail address was available, an email was sent explaining the nature of the study with a link to the online platform for electronic survey completion. Three weeks later a follow-up postcard and e-mail reminder was distributed. The response rate for this group was 32%.

A sample of defense attorneys was collected through a posting on a professional list serve for criminal defense lawyers. A defense attorney agreed to post a description of the study along
with a link to the online platform for the survey. No follow up contact was made. This list serve had 697 members, however a precise number of members who are subscribed and who receive list serve postings is unclear and therefore a precise response rate cannot be determined.

The final sample consisted of 105 legal professionals in the state of Oregon. This group was composed of 37 judges, 25 district attorneys, 30 public defense attorneys, and 13 private defense attorneys. Nine participants began and did not complete the survey. Participants ranged in age from 24 to 74 years old with a mean age of 48.75 years (SD = 11.31). The majority of participants identified themselves as being from a metropolitan county (68.0%), as male (68.0%), and European-American (89.3%). Of the participants, 7.8% did not identify a race, 1.9% identified as Native-American, and 1% identified as Latino. Number of years in practice ranged from 1 to 47 (M = 19.92, SD = 11.01). Some participants declined to report some demographic information: 8 participants did not report a race or ethnicity, 3 participants did not report if they worked in a metropolitan or non-metropolitan county, 2 participants did not report their age, 2 participants did not report the number of years in legal practice, and 1 participant did not endorse a gender.

**Materials and Procedure**

Each participant was given an informed consent procedure that was approved by the university’s institutional review board. The form indicated (a) the study’s interest in legal professionals’ views of mental health expert witness testimony, (b) that the study was voluntary and, (c) if they did participate, they could withdraw from the study at any time without penalty (see Appendix B). Completion of the survey was considered consent to participate.
Participants completed the survey in which they were asked to indicate the importance of 11 elements of testimony commonly included in a criminal responsibility evaluation on a 9-point scale (see Appendix B for a copy of the measure). Participants were then asked to rank order the discipline of expert witness they would most prefer testify for each given element of testimony indicating their first, second, and third choice. Participants were asked to report demographic information including: role in the courtroom, years in legal practice, work in a metropolitan or non-metropolitan county, gender, age, and race/ethnicity.

The survey required approximately 15 minutes to complete. A $2 charitable contribution to the participant’s choice of six non-profit organizations was offered as an incentive. Each participant was thanked for their time and an e-mail address will be available for any follow-up questions. No identifying information was collected and all responses were anonymous.

The survey design was modeled after Redding et al.’s 2001 survey. This survey contained eight items and asked legal professionals to rate the importance of each aspect of testimony based on a 9-point Likert scale. For the purposes of this study, the original eight items were maintained in order and added an additional three elements to the end. Additionally, participants were asked to rank their preference of mental health professional they would most prefer to testify for each element of testimony.
Chapter 3

Results

Two questions guided this study: (a) What elements of testimony do legal professionals find the most important in a criminal responsibility evaluation? and (b) Which disciplines do legal professionals prefer as mental health expert witnesses for the various elements of testimony?

The first question concerned legal professionals’ rating of the importance of 11 commonly used elements of expert testimony. Figure 1 shows the mean scores of importance for the four groups of legal professionals. A one-way repeated measures ANOVA was conducted comparing the four groups of legal professionals reported level of importance for each of the 11 elements of testimony. A significant effect was found between the items ($F(30, 1010) = 4.55, p < .001$) indicating that legal professionals differed in the reported importance of the items of testimony.

A significant difference was found between legal professionals’ ratings of the importance of various aspects of testimony. A paired sample $t$-test was conducted to determine if there was a significant difference between the mean score of the items rated as most important and the elements of testimony rated lower. The mean of the highest ranked items was $7.32 (sd = 1.46)$. The fifth ranked item had a mean of $6.44 (sd = 2.84)$. A significant difference was found between these two items ($t(104) = 2.88, p = .005$). The mean of the item ranked second highest was $7.20$
(sd = 1.73). A significant difference was found between that item and the item rated as fifth most important ($t(104) = 2.34, p = .021$).

Figure 1. Mean item importance by legal professional. This figure illustrates item means as endorsed by four groups of legal professionals. The x-axis represents each of the 11 items and the y-axis indicates the mean score based on a 9-point Likert scale (1 = undesirable, 5 desirable, 9 = essential)

A one-way ANOVA was conducted comparing the four legal professionals’ reported importance of the 11 elements of testimony. No significant difference was found on 6 of the 11 elements of testimony. It is noteworthy that legal professionals did not vary significantly in their
perceptions of the elements of testimony that were rated as being the most important: psychological testing, clinical diagnosis, measure of dangerousness, and mental illness—
interpreting the legal standard, see Table 1.

Table 1

Five Highest Rated Elements of Testimony by Legal Professional.

<table>
<thead>
<tr>
<th></th>
<th>Judges</th>
<th>District Attorneys</th>
<th>Public Defense Attorneys</th>
<th>Private Defense Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>Psychological Testing</td>
<td>7.30</td>
<td>Ultimate Opinion</td>
<td>7.72</td>
<td>Psychological Testing</td>
</tr>
<tr>
<td>Clinical Diagnosis</td>
<td>7.30</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Measure of Dangerousness</td>
<td>7.05</td>
<td>Measure of</td>
<td>7.60</td>
<td>Interpreting the Legal Standard</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dangerousness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>History of Substance Use</td>
<td>6.86</td>
<td>Psychological</td>
<td>7.04</td>
<td>Clinical Diagnosis</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Testing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interpreting the Legal Standard</td>
<td>6.73</td>
<td>Clinical Diagnosis</td>
<td>6.64</td>
<td>Theoretical Accounts of Criminal Behavior</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ultimate Opinion</td>
<td>6.70</td>
<td>Interpreting the</td>
<td>6.44</td>
<td>Measure of Dangerousness</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Legal Standard</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note. Results described as Mean, based on a 9-point Likert scale (1 = undesirable, 5 = desirable, 9 = essential).

Legal professionals did not vary significantly in their ratings of the importance of testimony on psychological testing, $F(3, 101) = 1.36, p = .26$. The rated importance of descriptive testimony did not differ between legal professionals. Judges had a mean score of 7.29 ($SD = 1.43$), district attorneys had a mean score of 7.04 ($SD = 1.70$), public defense attorneys
had a mean score of 7.62 ($SD = 1.24$), and private defense attorneys had a mean score of 7.23 ($SD = 1.54$).

For the importance of testimony on clinical diagnosis, no significant difference was found on legal professionals’ rated importance of this element of testimony, $F(3, 101) = 1.21, p = .31$. Judges had a mean score of 7.30 ($SD = 1.51$), district attorneys had a mean score of 6.64 ($SD = 2.27$), public defense attorneys had a mean score of 7.40 ($SD = 1.57$), and private defense attorneys had a mean score of 7.54 ($SD = 1.45$).

On the importance of testimony on measure of dangerousness, legal professionals did not differ significantly, $F(3, 101) = 1.36, p = .26$. Judges had a mean score of 7.05 ($SD = 2.12$), district attorneys had a mean score of 7.60 ($SD = 1.35$), public defense attorneys had a mean score of 6.45 ($SD = 2.66$), and private defense attorneys had a mean score of 6.30 ($SD = 2.20$).

Similarly, no significant difference was found between the four groups of legal professionals on mental illness—interpreting the legal standard, $F(3, 101) = 1.01, p = .39$. Judges had a mean score of 6.73 ($SD = 2.53$), district attorneys had a mean score of 6.44 ($SD = 2.83$), public defense attorneys had a mean score of 7.55 ($SD = 2.13$), and private defense attorneys had a mean score of 6.70 ($SD = 2.78$).

Additionally, no significant difference was found between courtroom professionals on their ratings of the importance of descriptive testimony between the legal professionals, $F(3, 101) = 1.36, p = .26$. Judges gave descriptive testimony a mean score of 6.38 ($SD = 1.72$), district attorneys had a mean score of 5.64 ($SD = 1.93$), public defense attorneys had a mean score of 6.13 ($SD = 2.16$), and private defense attorneys had a mean score of 6.85 ($SD = 1.52$).
Likewise, legal professionals did not differ significantly on their ranking of the importance of testimony on statistical data about diagnosis, $F(3, 101) = 0.38, p = .77$. Judges had a mean score of 5.92 ($SD = 1.82$), district attorneys had a mean score of 5.80 ($SD = 2.53$), public defense attorneys had a mean score of 5.52 ($SD = 2.08$), and private defense attorneys had a mean score of 5.31 ($SD = 1.97$).

Significant differences were found on the remaining five elements of testimony between the four groups of legal professionals. Four of these aspects of testimony were rated as the least important, see Table 2. This data analysis suggests that while legal professionals agreed on the most important aspects of testimony, there is much less agreement regarding the elements of testimony that are not essential.

Legal professionals also differed significantly in their rating of the importance of crime statistical data related to diagnosis, $F(3, 101) = 3.61, p = .016$. A Bonferroni correction was used to determine the nature of the difference between legal professionals. This analysis revealed that district attorneys rated crime statistical data related to diagnosis lower ($M = 2.92, SD = 2.02$) than private defense attorneys ($M = 5.15, SD = 2.59$). Judges and public defense attorneys did not differ significantly from any of the four groups.

On the item weighing different motives and explanations, legal professionals varied significantly on their rating of the importance of this element of testimony, $F(3, 101) = 9.20, p < .001$. A Bonferroni correction was used to determine the nature of the difference. This analysis revealed that district attorneys rated this item as of significantly less important ($M = 2.96, SD = 2.31$) than judges ($M = 4.73, SD = 2.38$), private defense attorneys ($M = 5.38, SD = 2.59$), and public defense attorneys ($M = 6.24, SD = 2.19$).
### Table 2

**Five Lowest Rated Elements of Testimony by Legal Professional.**

<table>
<thead>
<tr>
<th>Judges</th>
<th>District Attorneys</th>
<th>Public Defense Attorneys</th>
<th>Private Defense Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime Statistical Data related to diagnosis</td>
<td>3.76</td>
<td>2.92</td>
<td>4.13</td>
</tr>
<tr>
<td>Weighing different motives/ explanations</td>
<td>4.73</td>
<td>2.96</td>
<td>5.52</td>
</tr>
<tr>
<td>Theoretical Accounts/ Explanations of Criminal Behavior</td>
<td>5.76</td>
<td>4.00</td>
<td>6.10</td>
</tr>
<tr>
<td>Statistical Data about Diagnosis</td>
<td>5.92</td>
<td>5.64</td>
<td>6.13</td>
</tr>
<tr>
<td>Descriptive Testimony</td>
<td>6.38</td>
<td>5.80</td>
<td>6.24</td>
</tr>
</tbody>
</table>

**Note.** Results described as Mean, based on a 9-point Likert scale (1 = undesirable, 5 = desirable, 9 = essential).

A significant difference was found between the four groups of legal professionals’ ranking on the importance of expert witness testimony on theoretical accounts and explanations of criminal behavior, \( F(3, 101) = 7.01, p < .001 \). A Bonferroni correction was used to determine the nature of the difference between legal professionals. This analysis revealed that district attorneys rated the importance of this item of testimony significantly lower \( (M = 4.00, SD = 2.25) \) than judges \( (M = 5.76, SD = 2.25) \), public defense attorneys, \( (M = 4.13, SD = 2.06) \), and
private defense attorneys ($M = 6.77, SD = 1.96$). Judges, public defense attorneys, and private defense attorneys did not differ significantly from one another.

Legal professionals varied significantly on their view of the importance of testimony on history of substance abuse, $F(3, 101) = 4.80, p = .004$. A Bonferroni correction revealed that judges rated this item as significantly more important ($M = 6.86, SD = 1.64$) than private defense attorneys ($M = 5.23, SD = 1.54$) and public defense attorneys ($M = 5.51, SD = 1.71$). District Attorneys did not differ significantly from any of the other three groups.

Lastly, significant difference was also found between legal professions on the importance of ultimate opinion, $F(3, 101) = 5.85, p = .001$. A Bonferroni correction was used to determine the nature of the difference, revealing that private defense attorneys rated this item significantly lower ($M = 4.00, SD = 2.86$), than judges ($M = 6.70, SD = 2.57$) and district attorneys ($M = 7.72, SD = 2.02$). Public defense attorneys did not differ significantly from any of the other groups.

The second question explored the rankings of judges, district attorneys, public defense attorneys, and private defense attorneys on the type of mental health expert witness they would most prefer testify on each of the 11 elements of testimony. Data analysis indicated that legal professionals agreed on the preferred expert witness on 10 of the 11 items, see Table 3. There was a significant difference between legal professionals’ preferences for testimony on theoretical accounts of criminal behavior, $\chi^2(6) = 8.22, p = .04$. In other words, the three types of mental health expert witnesses were not equally preferred. As there was no difference between the legal professionals, the categories were collapsed and a chi squared, goodness of fit test was conducted to test the null hypothesis that all of the mental health professionals were equally preferred. The null hypothesis was rejected, $p < .01$ indicating that mental health experts were selected in
varying amounts. Data analysis indicated that 67.6% of judges preferred psychologists, 29.7% preferred psychiatrists, and 2.7% preferred social workers. Fifty-six percent of district attorneys selected psychologists as their first choice and 44% selected psychiatrists. Of public defense attorneys 46.7% ranked psychologists as their first choice, 43.3% preferred psychiatrists, and 10% preferred social workers. Of private defense attorney, 76.9% preferred psychiatrists and 23.1% preferred psychologists.

Table 3

<table>
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<tr>
<th>Element of Testimony</th>
<th>Chi Squared Value</th>
<th>P. Value</th>
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<tbody>
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<td>Descriptive Testimony</td>
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<td>.13</td>
</tr>
<tr>
<td>Clinical Diagnosis</td>
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<td>.54</td>
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<td>Statistical Data about Diagnosis</td>
<td>4.16</td>
<td>.24</td>
</tr>
<tr>
<td>Interpreting the Legal Standard</td>
<td>1.98</td>
<td>.58</td>
</tr>
<tr>
<td>Theoretical Accounts of Criminal Behavior</td>
<td>8.22</td>
<td>.04</td>
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<td>Crime Statistical Data Related to Diagnosis</td>
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<td>.57</td>
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<td>Weighing different motives/explanations</td>
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<td>Ultimate Opinion</td>
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<td>.86</td>
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<td>Psychological Testing</td>
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<td>.90</td>
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<td>History of Substance Use</td>
<td>3.08</td>
<td>.38</td>
</tr>
<tr>
<td>Measure of Dangerousness</td>
<td>3.27</td>
<td>.35</td>
</tr>
</tbody>
</table>

*Note.* Degrees of freedom = 3.
The analysis indicates that on the remaining 10 items, courtroom professionals did not differ significantly in their preference of mental health expert witness. Psychologists were the first choice expert witness for 8 of these aspects of testimony. See Table 4. For the question of descriptive testimony, 43.8% of legal professionals preferred psychologists, 37.1% preferred psychiatrists, and 19.0% preferred social workers. For testimony on clinical diagnosis, 60% of legal professionals ranked psychologists as their first choice to testify, 38.1% favored psychiatrists, and 1.9% preferred social workers. On crime statistical data related to diagnosis, 46.7% of legal professionals ranked psychologists as their first choice to testify, 38.1% favored psychiatrists, and 15.2% preferred social workers. For the question of mental illness—interpreting the legal standard, 65.7% of courtroom professionals preferred psychologists as their first choice to testify, 31.4% preferred psychiatrists, and 2.9% selected social workers. Psychologists were also preferred to testify on crime statistical data related to diagnosis as 46.7% of legal professionals preferred psychologists, 38.1% preferred psychiatrists, and 15.2% preferred social workers. Also, 47.6% of legal professionals selected psychologists to testify on weighing different motives and explanations, 41.9% selected psychiatrists, and 10.5% selected social workers. On the element of ultimate opinion, the majority of legal professionals (62.9%) preferred psychologists testify, 33% selected psychiatrists, and 3.8% preferred social workers. For the question of measure of dangerousness, examination of the data show that 52.3% of legal professionals preferred psychologists, 41.9% preferred psychiatrists, and 5.7% preferred social workers.

For testimony on psychological testing, 61% of legal professionals preferred psychiatrists as the first choice expert witness, 37.1% selected psychologists, and 1.9% selected social
workers. Likewise, legal professionals preferred psychiatrists to testify on history of substance use. Thirty-six point two percent of legal professionals selected psychiatrists to testify, 35.2% selected psychologists, and 28.6% of courtroom professionals preferred social workers.

Table 4

Percentage of Mental Health Expert Witnesses Ranked First to Testify on 11 Elements of Testimony by Legal Professional and Overall Sample

<table>
<thead>
<tr>
<th></th>
<th>Judges</th>
<th>District Attorneys</th>
<th>Public Defense Attorneys</th>
<th>Private Defense Attorneys</th>
<th>Overall Mean</th>
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<td>Descriptive Testimony</td>
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<td>30.8</td>
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<td>Clinical Diagnosis</td>
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<td></td>
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Chapter 4
Discussion

Criminal responsibility evaluations represent the most substantial link between the legal and psychological communities. As the number of CREs conducted each year continues to increase, it is imperative that skilled mental health experts provide vulnerable defendants with valid assessments. Research has shown that mental health expert testimony has a powerful impact on the outcome of criminal responsibility cases. It is crucial to have accurate and knowledgeable experts to conduct evaluations and testify in these cases.

There was a twofold purpose to this study. First, this study sought to determine legal professionals’ perceptions of the importance of 11 factors of testimony commonly used in a criminal responsibility evaluation. Second, this study explored which mental health expert witness (psychiatrist, psychologist, social worker) judges, district attorneys, public and private defense attorneys preferred for each of the 11 items of testimony. The major findings of this study were: (a) legal professionals’ preference for psychologists as mental health expert witnesses, and (b) there was agreement between legal professionals’ ratings of the most important items of testimony and the type of mental health expert witness preferred to testify.

Importance of Elements of Testimony

The first purpose of this study was to determine legal professionals’ perception of the importance of 11 elements of testimony commonly used in CRE. The elements of testimony rated as highest importance were: psychological testing, clinical diagnosis, measure of
dangerousness and mental illness interpreting the legal standard. See Table 1 (in Chapter 3: Results) for a list of the five most important elements of testimony as rated by the four groups of legal professionals. Legal professionals likely prioritized these findings on clinical diagnosis and mental illness—interpreting the legal standard, as they are central to the question of criminal responsibility. If the defendant does not meet the criteria for a psychological diagnosis, they are no longer able to use criminal responsibility as a defense. Likewise, testimony on mental health—interpreting the legal standard is foundational for a criminal responsibility plea. The evaluation needs to determine if the defendant had a mental disease or defect that impaired him or her from understanding his or her conduct and/or his or her ability to control behavior.

Psychological testing is one of the principle tools used to answer the question of clinical diagnosis. Assessments provide valuable information regarding a defendant’s abilities, effort, and enhance the understanding of mental health symptoms. Consistent with the legal system’s priority for public safety, legal professionals prioritized testimony on measure of dangerousness. Data analysis indicated that all the legal professionals surveyed find these elements of testimony essential to CRE.

There was less agreement among legal professionals regarding the elements of testimony rated as lowest importance: crime statistical data related to diagnosis, weighing different motives and explanations, theoretical accounts and explanations, and statistical data about diagnosis. See Table 2 (in Chapter 3: Results) for a list of the five least important elements of testimony as rated by the four groups of legal professionals. However, on three of these factors of testimony, there was a significant difference between the perceived importance among legal professions. District attorneys rated testimony on theoretical accounts and explanations of criminal behavior, crime
statistical data related to diagnosis, and weighing different motives and explanations as significantly less important than other legal professionals. District attorneys represent the plaintiff and may be less concerned with the rationale behind a defendant’s behavior and more focused on the pursuit of justice. Conversely, defense attorneys are working to explain their client’s actions to develop empathy in the judge or jury. It is notable that judges’ ratings of these items more closely aligned with those of defense attorneys, as it suggests that judges are willing to explore and understand the defendant’s plight. The perceived importance of each element of testimony was contingent upon legal professional’s role in the courtroom.

Deviating from the opinion of the other legal professionals, private defense attorneys rated testimony on ultimate opinion as significantly less important than judges and district attorneys. These findings were similar to Redding et al. (2001). They suggested that defense attorneys might be concerned that the expert witness would not support an insanity defense as an explanation and the current data does not contradict it.

**Preference of discipline of Mental Health Expert Witness**

In the overall sample, psychologists were consistently preferred. The majority of legal professionals ranked psychologists as their first choice to testify on 9 of the 11 elements of testimony. The majority of the overall sample rated psychiatrists as the first choice expert witness on the remaining two items, psychological testing and history of substance abuse. It is striking that all four groups rated psychiatrists as the preferred expert witness on psychological testing, which was also rated as the most important element of testimony. Psychological assessment is the professional domain of psychologists; psychiatrists are not trained in psychological testing. This may suggest that legal professionals are unclear regarding the
specialties of various mental health disciplines. Psychologists need to work to educate the legal profession on psychologists’ area of expertise and domain in the area of testing.

It is noteworthy that judges rated the importance of testimony on history of substance abuse significantly higher than both public and private defense attorneys and judges rated social workers as their first choice to testify on this aspect of testimony. This is the only elements of testimony on which a group of legal professionals identified social workers as their first choice as an expert witness. These results suggest that judges’ views of testimony on history of substance abuse vary significantly from other courtroom professionals.

**Comparison to Prior Research**

Although this study was based on Redding et al.’s 2001 survey, these findings were substantially different. Readers should be aware that the data were collected in Oregon and while these results may suggest that forensic psychology has made ground, these results could also be unique to Oregon. This study suggests that the majority of legal professionals overwhelmingly prefer psychologists as mental health expert witnesses. Although these results are contrary to past studies, including the findings of Redding et al. (2001), they support a preference for psychological expert witness testimony in the courtroom. Past studies are dated and were conducted in states with different jurisdictions so contrasting results should be done with caution. It is clear that additional research needs to be conducted in this area.

As one might expect, legal professionals rated testimony on clinical diagnosis and mental health—interpreting the legal standard as very important in both studies, as these are foundational elements to determine criminal responsibility. The results of this study are unique as research in this area is limited.
Limitations of the Study

A possible limitation to this study is the generalizability of its results. A convenience sample of courtroom professionals in Oregon was used. This methodology was necessary given the expert nature of the sample, but has limitations and may not be generalizable to all legal professionals in Oregon. Additionally, the laws of each state that guide criminal responsibility evaluations would likely have an impact on legal professionals’ responses and preference for expert testimony. Due to Oregon’s unique statutes, perceptions of these legal professionals may not represent the views of legal professionals in other areas.

Future Research Recommendations

Additional research is needed to investigate the rationale behind legal professionals’ responses. Qualitative research exploring legal professionals’ motivations behind their ratings of the importance of various elements of testimony and their understanding of the expertise of various mental health disciplines would aid the understanding of these results.

Likewise, it would be beneficial to the field to understand how these preferences would be impacted in the context of either a bench or jury trial to determine how the target audience impacts the presentation of criminal responsibility cases. Lastly, it would be helpful to explore jury’s preferences for expert witness testimony to further understand the jury’s impact on legal professionals’ ratings.
References


Holloway v. United States, 148 F.2d 665 (1945).


Appendix A

Chronological List of Forensic Assessments
Chronological List of Forensic Assessments

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<th>Year</th>
<th>Test Name</th>
<th>Author</th>
</tr>
</thead>
<tbody>
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<td>1965</td>
<td>Competency to Stand Trial Checklist for Psychiatrists</td>
<td>Robey, A.</td>
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<tr>
<td>1971</td>
<td>Competency Screening Test (CST)</td>
<td>Litsitt, P., Lelos, D., &amp; McGarry, A.L.</td>
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<td>1978</td>
<td>Georgia Court Competency Test</td>
<td>Wildman, R.W., Batchelor, E.S., Thompson, I., Nelson, F.R., Moore, J.T., Patterson, M.E., &amp; de Laosa, M.</td>
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<td>1978</td>
<td>Schedule of Affective Disorders and Schizophrenia (SADS)</td>
<td>Spitzer, R.L., &amp; Endicott,</td>
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<td>1984</td>
<td>Fitness Interview Test (FIT)</td>
<td>Roesch, R., Webster, C.D., &amp; Eaves, D.</td>
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<tr>
<td>1984</td>
<td>Interdisciplinary Fitness Interview (IFI)</td>
<td>Golding, S.L., Roesch, R., &amp; Schreiber, J.</td>
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<td>1984</td>
<td>Rogers Criminal Responsibility Assessment Scale (R-CRAS)</td>
<td>Rogers, R.</td>
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<td>Georgia Court Competency Test—Mississippi State Hospital Revision (GCCT-MSH)</td>
<td>Nicholson, R., Briggs, S., &amp; Robertson, H.</td>
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<td>Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)</td>
<td>Everington, C.T. &amp; Luckasson, R.</td>
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<td>1991</td>
<td>Hare Psychopathy Checklist-Revised (RCL-R)</td>
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<td>Structured Clinical Interview of DSM-IV Disorders (SCID)</td>
<td>Spitzer, R.L., Williams, J.B.W., Gibbon, M. &amp; First, M.B.,</td>
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<td>Test of Memory Malingering (TOMM)</td>
<td>Tombaugh, T.N.</td>
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<td>2004</td>
<td>Evaluation of Competence to Stand Trial-Revised (ECST-R)</td>
<td>Rogers, R., Tillbrook, C.E., &amp; Swell, K.W.</td>
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<td>2005</td>
<td>Jail Screening Assessment Tool (JSAT)</td>
<td>Nicholls, T.L., Roesch, R., Olley, M.C., Ogloff, J.R.P., &amp; Hemphill, J.F.</td>
</tr>
<tr>
<td>2006</td>
<td>Fitness Interview Test-Revised (FIT-R)</td>
<td>Roesch, R., Zapf, P.A., &amp; Eaves, D.</td>
</tr>
</tbody>
</table>
Appendix B

Informed Consent and Survey Measure
Legal Professionals Views of Mental Health Expert Witnesses

B. You will be asked to rank in order which mental health professional (psychologist, psychiatrist, social worker) you would most prefer provide the testimony for the specified information.

1. Descriptive Testimony:

Some mental health expert testimony about mental illness may consist of descriptions of the defendant's behavior, reporting simply the observation of the expert witness or of others.

Example: "The defendant reported a persistent sad mood after separating from the defendant's former spouse. The defendant described loss of appetite, sleeplessness, fatigue and thoughts of suicide. Friends described the defendant as withdrawn."

Please indicate the importance of descriptive testimony:

<table>
<thead>
<tr>
<th>Undesirable</th>
<th>Desirable</th>
<th>Essential</th>
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<tbody>
<tr>
<td>Descriptive Testimony</td>
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</table>

Please rank in order which mental health professional you would most prefer provide descriptive testimony:

<table>
<thead>
<tr>
<th>Third</th>
<th>Second</th>
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<tbody>
<tr>
<td>Psychologist</td>
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<td>Psychiatrist</td>
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<td>Social Worker</td>
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</tbody>
</table>

2. Clinical Diagnosis:

This aspect of testimony consists of statements regarding whether or not the defendant would be diagnosable in the clinical setting, and statements of what the diagnosis would be.

Example: "The defendant is suffering from depression in response to marital problems. The formal clinical diagnosis for this condition is major depressive episode."

Please indicate the importance of clinical diagnosis:

<table>
<thead>
<tr>
<th>Undesirable</th>
<th>Desirable</th>
<th>Essential</th>
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</thead>
<tbody>
<tr>
<td>Clinical Diagnosis</td>
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</table>
Legal Professionals Views of Mental Health Expert Witnesses

Please rank in order which mental health professional you would most prefer testify on clinical diagnosis:

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<th></th>
<th>Third</th>
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<tbody>
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<td>Psychologist</td>
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<td>Psychiatrist</td>
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<td>Social Worker</td>
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</table>

3. Statistical Data about Diagnosis:

This aspect of testimony consists of statements of the reliability or validity of the clinical diagnosis offered by the clinician.

Example: “The diagnosis of major depressive episode has a reliability of about 68%. That is, different examiners would agree on this diagnosis about two thirds of the time.”

Please indicate the importance of statistical data about diagnosis:

<table>
<thead>
<tr>
<th></th>
<th>Undesirable</th>
<th>Desirable</th>
<th>Essential</th>
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</thead>
<tbody>
<tr>
<td>Statistical Data about Diagnosis</td>
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</tbody>
</table>

Please rank in order which mental health professional you would most prefer testify on statistical data about diagnosis:

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<th>Third</th>
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<tbody>
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<td>Psychologist</td>
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<td>Social Worker</td>
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</table>

4. Mental Illness—Interpreting the Legal Standard:

This aspect of testimony consists of statements as to whether or not the diagnosis or symptoms in the present case constitutes mental illness according to a legal (e.g. statutory) definition.

Example: “The duration and severity of the defendant's depression is such that, in my opinion, it represents a ‘significant mental disease’ as the term is used in the law.”
### Legal Professionals Views of Mental Health Expert Witnesses

#### Please indicate the importance of Mental Illness: Interpreting the Legal Standard

<table>
<thead>
<tr>
<th>Mental Illness—Interpreting the Legal Standard</th>
<th>Undesirable</th>
<th>Desirable</th>
<th>Essential</th>
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<td>✔</td>
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#### Please rank in order which mental health professional you would most prefer provide testimony on mental illness—interpreting the legal standard:

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<thead>
<tr>
<th>Professional</th>
<th>Third</th>
<th>Second</th>
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<tbody>
<tr>
<td>Psychologist</td>
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<tr>
<td>Psychiatrist</td>
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<td>✔</td>
<td>✔</td>
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<tr>
<td>Social Worker</td>
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</table>

### 5. Theoretical Accounts/Explanations of Criminal Behavior:

This aspect of testimony would consist of statements by the expert witness which put forth theoretical relationships between a defendant’s symptoms and the legally relevant behavior.

Example: “Severe depression often affects thinking and judgment in significant ways. The defendant’s feelings of hopelessness and wishes to die led the defendant to contemplate the burning of the home previously shared with the defendant’s former spouse as an act of self-annihilation and a symbolic destruction of the defendant’s marriage.”

#### Please indicate the importance of Theoretical Accounts/Explanations of Criminal Behavior:

<table>
<thead>
<tr>
<th>Theoretical Accounts/Explanations of Criminal Behavior</th>
<th>Undesirable</th>
<th>Desirable</th>
<th>Essential</th>
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</tbody>
</table>
Legal Professionals Views of Mental Health Expert Witnesses

Please rank in order which mental health professional you would most prefer provide testimony on theoretical accounts and explanations of criminal behavior:

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<tr>
<th>Third</th>
<th>Second</th>
<th>First</th>
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<tbody>
<tr>
<td>Psychologist</td>
<td>Psychiatrist</td>
<td>Social Worker</td>
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</table>

6. Crime Statistical Data Related to Diagnosis:

This aspect of testimony would consist of actuarial data about the relationship between clinical behavior (e.g. symptoms or diagnosis) and various types of legally relevant behavior (e.g. incidence of various crimes).

Example: “Of defendants charged with arson and subsequently referred for evaluations, about 17% are diagnosed with a significant mental disorder and about 4% are diagnosed with a depressive condition similar to that of the defendant.”

Please indicate the importance of crime statistical data related to diagnosis:

<table>
<thead>
<tr>
<th>Undesirable</th>
<th>Desirable</th>
<th>Essential</th>
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</thead>
<tbody>
<tr>
<td>Crime statistical data related to diagnosis</td>
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</table>

Please rank in order which mental health professional you would most prefer provide testimony on crime statistical data related to diagnosis:

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<th>Third</th>
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<th>First</th>
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<tbody>
<tr>
<td>Psychologist</td>
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<td>Social Worker</td>
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</tbody>
</table>

7. Weighing Different Motives/Explanations:

In some cases the expert may consider different competing motives or explanations for criminal behavior and offer an opinion concerning which factor(s) contributed most significantly to the legally relevant behavior (crime).

Example: “An arson like the present offense possibly could be motivated by financial gain (e.g. insurance) or retaliations or revenge (e.g. destroying assets of the ex-spouse). In this case, the intentional burning was unconcealed and precluded...”
Legal Professionals Views of Mental Health Expert Witnesses

insurancerecovery, and the ex-spouse no longer had a financial interest in the house of its contents. Therefore, it is my opinion that self-destructive impulses related to depression motivated the arson.*

Please indicate the importance of weighing different motives/explanations:

<table>
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<tr>
<th>Undesirable</th>
<th>Desirable</th>
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</table>

Please rank in order which mental health professional you would most prefer provide testimony on weighing different motives/explanations:

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<tbody>
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8. Ultimate Opinion:

This aspect of testimony consists of statements on the ultimate legal issues. These statements are conclusory in nature and are often couched in the language of the legal standard.

Example: "Although the defendant was depressed and suicidal at the time of the alleged offense, it is my opinion that the defendant understood the wrongfulness of burning their house and that the arson was not an irresistible impulse. Therefore, the defendant was not legally insane.

Please indicate the importance of an ultimate opinion:

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<th>Undesirable</th>
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<th>Essential</th>
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</table>

Please rank in order which mental health professional you would most prefer provide testimony on ultimate opinion:

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<td>Social Worker</td>
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9. Psychological Testing:
Legal Professionals Views of Mental Health Expert Witnesses

Psychological testing conducted to look at the defendant’s legal knowledge and reasoning, personality, potential malingering, and overall state of mental health.

Please indicate the importance of psychological testing:

<table>
<thead>
<tr>
<th>Undesirable</th>
<th>Desirable</th>
<th>Essential</th>
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<tr>
<td>Psychological Testing</td>
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</table>

Please rank in order which mental health professional you would most prefer provide testimony on psychological testing:

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10. History of Substance Use:

Information regarding the defendant’s history of substance use and substances past and/or current (e.g. defendant frequently drinks alcohol.)

Please indicate the importance of testimony on history of substance use:

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<thead>
<tr>
<th>Undesirable</th>
<th>Desirable</th>
<th>Essential</th>
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<tbody>
<tr>
<td>History of Substance Use</td>
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</tbody>
</table>

Please rank in order which mental health professional you would most prefer provide testimony on history of substance use:

<table>
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<th>Third</th>
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<tbody>
<tr>
<td>Psychologist</td>
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<td>Social Worker</td>
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11. Measure of Dangerousness:

Testimony on the applicability of Dangerous Offender, a defendant who is being sentenced for a Class A felony. Includes: 1) discussion of a defendant suffering from a personality disorder creating a tendency towards behaviors that seriously
Legal Professionals Views of Mental Health Expert Witnesses

Please indicate your race/ethnicity:
- African-American
- Native American/Alaskan Native
- European-American
- Hispanic/Latino
- Asian American/Pacific Islander
- Other (please specify)

Thank you for your participation!
In appreciation of your participation, please let us know if we can make a $2 donation to your preference of one of the following charities:

Please indicate your preference:
- Friends of Children
- Harper's Playground
- National Alliance on Mental Illness
- Oregon Environmental Council
- Portland Habitat for Humanity
- United Way
Appendix C

Curriculum Vitae
KRISTAL GREGG

11155 SW Hall Blvd, Apt 4, Portland, Oregon 97223
Phone 503.481.8045 • Krystal.Gregg9@gmail.com

EDUCATION

George Fox University September 2008 – Present
APA Accredited Doctor of Clinical Psychology Program; Newberg, OR
MA in Clinical Psychology conferred April 2010

George Fox University September 2001 – May 2005
BA Double Major in Sociology and Christian Ministries, Cross-Cultural Emphasis; Newberg, OR
Graduated Cum Laude May 2005

SUPERVISED CLINICAL EXPERIENCE

Oregon State Hospital September 2011 – Present
Practicum Therapist
Setting: Inpatient Forensic Hospital; Salem, OR
Supervisor: Nicole Ball, PhD, JD

Providence Newberg Medical Center May 2010 – Present
Behavioral Health Consultation Team Member
Setting: General Medical Hospital: Emergency Department, Intensive Care Unit and Medical/Surgical Unit; Newberg, OR
Supervisors: Bill Buhrow, PsyD, Joel Gregor, PsyD and Mary Peterson, PhD

Hazelden Springbrook Substance Abuse Treatment Center August 2010 – July 2011
Practicum Therapist
Settings: Chemical Dependency Treatment Center and Outpatient Mental Health Services; Newberg, OR
Supervisor: Shari Melton, PsyD

Cedar Hills Hospital October 2009 – June 2010
Practicum Therapist
Settings: Inpatient Units: Adult Psychiatric, Chemical Dependency, Freedom Care, and Women’s Trauma Outpatient: Partial Hospitalization/Intensive Outpatient Program; Portland, OR
Supervisors: Lane DeWan, PsyD and Sandy Rechsteiner, LCSW
Square Peg Psychological  July 2009 – June 2010
Practicum Therapist
Settings: Private practice and public and private schools, Grades K-12; Milwaukie, OR
Supervisor: Denise Lopez-Haugen, PsyD

George Fox University  February 2009 – May 2009
Pre-Practicum Therapist
Setting: University Student Health and Counseling Center; Newberg, OR
Supervisors: Clark Campbell, PhD and Ryan Thompson, MA

RELEVANT PROFESSIONAL EXPERIENCES

Cedar Hills Hospital  July 2010 – March 2012
PRN Program Therapist
Settings: Inpatient: Adult Psychiatric, Chemical Dependency, Faith-based and Women’s Trauma Units; Portland, OR
Supervisor: Sandy Rechsteiner, LCSW

Providence St. Vincent Medical Center  May 2007 – August 2008
Administrative Assistant II
Setting: General Medical Hospital: Behavioral Health Unit; Portland, OR
Supervisor: Brenda Andersen, RN, MHL

Providence Health System, Oregon Region Behavioral health Administration  August 2007 – October 2007
Interim Assistant to the Medical Director
Setting: Regional Behavioral Health Administration; Portland, OR
Supervisor: Jeffery Young, MD

Quality Improvement and Insurance Specialist
Setting: Community Mental Health; Tigard, OR
Supervisor: David Sones, MS, QMHP

Billing and Insurance Specialist
Setting: Community Mental Health; Tigard, OR
Supervisor: John Trinh, MBA

Walk-in Service Coordinator
Setting: Community Mental Health; Tigard, OR
RELEVANT TEACHING & ACADEMIC APPOINTMENTS

Teaching Assistant for Practicum Training  
September 2011 – April 2012
George Fox University; Newberg, OR
Supervisor: Carlos Taloyo, PhD

Presenter  
October 2011
Forensic Evaluation Services
Oregon State Hospital; Salem, OR
Title: Mental Health Expert Testimony: Information for Forensic Evaluators

Presenter  
February 2011
School of Dentistry
Oregon Health and Sciences University; Portland, OR
Title: Motivational Interviewing for Dental Professionals
Introduction to MI for over 150 dental students and faculty

Lecturer  
February 2011
Undergraduate course: Psychosocial Intervention and Referral in Athletic Training
George Fox University; Newberg, OR
Title: Substance Abuse: Information for Athletic Trainers

Presenter  
January 2011
Celebrating Families Conference
Gladstone High School; Gladstone, OR
Title: Stress Management for Families

Teaching Assistant  
August 2010 – December 2010
Undergraduate course: Advanced Counseling
George Fox University; Newberg OR
Supervisor: Kristina Kays, PsyD

PROFESSIONAL PUBLICATIONS AND PRESENTATIONS

Symposium presentations


**Paper presentations**


**Poster presentations**


Gregg, K. R., Schneider, N. M., & Peterson, M. A. (August, 2010). Rural medical center suicide risk assessment for ages 6-24 years. Poster presented at the annual meeting of the American Psychological Association; San Diego, CA.
logical factors and suicide risk assessment rates in the emergency department of rural Oregon. Poster presented at the annual meeting of the Oregon Psychological Association; Portland, OR.

RESEARCH EXPERIENCE

Cedar Hills Hospital September 2010 – May 2011
Program Evaluator
Setting: Outpatient Mother and Infant Program and Inpatient Women’s Trauma Program;
Portland, OR
Supervisor: Mike Sherbun, PhD

Richter Grant Recipient December 2010
Project Title: Mental health expert testimony: Legal professionals’ preferences in criminal responsibility evaluations

Department of Corrections February 2009 – October 2009
Research Assistant
Setting: State Prisons; Salem, OR
Supervisor: Sheri Melton, PsyD

George Fox University January 2004 – April 2004
Research Assistant
Setting: University; Newberg, OR
Supervisor: Sue O’Donnell, PhD

TRAINING IN SUPERVISION

Mentor—Second Year Practicum Student September 2010 – April 2012
George Fox University; Newberg, OR

AFFILIATIONS, MEMBERSHIPS AND LEADERSHIP EXPERIENCE

Association for Contextual Behavioral Science June 2011 – Present
Member

Association for Psychological Science January 2011 – Present
Graduate Student Affiliate
Advocacy Coordinating Team, American Psychological Association of Graduate Students
Oregon State Representative September 2010 – Present

Oregon Psychological Association July 2010 – Present
Graduate Student Affiliate

Multicultural Committee, George Fox University September 2009 – Present
Clerk

American Psychological Association September 2008 – Present
Graduate Student Affiliate

Student Involvement Task Force, Oregon Psychological Association August 2010 – July 2011
Campus Representative

Advocacy Coordinating Team, American Psychological Association of Graduate Students September 2009 – August 2010
Campus Representative

Graduate Department of Clinical Psychology, George Fox University May 2009 – August 2010
Peer Mentor

Community Care Committee, George Fox University September 2008 – May 2010
Member

H O N O R S & A W A R D S

Multicultural scholarship recipient September 2008 – Present
George Fox University

Excellence in Leadership Award Nominee October 2010
Advocacy Coordinating Team, American Psychological Association of Graduate Students

Dean’s List September 2003 – May 2005
George Fox University

V O L U N T E E R   W O R K

Volunteer January 2007 – August 2008
Providence St. Vincent Medical Center, Employee Activities Committee; Portland, OR
English as a Second Language Teacher
Sunset Presbyterian Church; Portland, OR
September 2006 – December 2006

Domestic Violence Crisis Line Volunteer
American Domestic Violence Crisis Line; Portland, OR
May 2005 – November 2006

Student Intern
Summer Language Institute, George Fox University; Newberg, OR
May 2003 – August 2003

English Teacher
English Language Institute China; Guiyang, Guizhou Province, China
June 2001 – August 2001

REFERENCES
Available upon request