DEFENSE ATTORNEYS' PERCEPTIONS OF COMPETENCY TO STAND TRIAL EVALUATIONS IN OKLAHOMA: A SECOND LOOK

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CHAPTER I.

INTRODUCTION

In Oklahoma, after a defendant is charged with a crime, there may be a time when competency of the defendant is called into question. This issue may be raised by the defendant, the defendant's attorney, the district attorney or even the judge. A hearing is held to determine if a doubt does exist as to his competency to stand trial. If there is no doubt, the proceedings resume. However, if there is a doubt, the proceedings are suspended and a competency evaluation is ordered by the court.[1] A criminal defendant is assured by the Fourteenth Amendment to the Constitution that he or she will receive a fair procedure and will not be deprived of "life, liberty or property, without due process of law." The origin of the concept of competency dates back to English common law. Not only does the defendant have the "right to be physically present at trial," but to be "mentally present" as well (Stafford, 2003, p. 360). In the 1600's, the courts in England attempted to discern whether a defendant was "mute of malice" or "mute by visitation of God" by various physical means in an effort to obtain a plea. A century later, the English court in *King v. Frith*, 22 How. St. Tr. 307 (1790) recognized the need for the defendant to have his entire mental faculties about him so that he may properly defend himself (p. 360). Therefore, an accurate evaluation of the competency of a defendant has a great impact not only on the defendant but on the justice system and society as well.

[1] Please see **Figure 1** for a more detailed flow chart of the Competency to Stand Trial Process in Oklahoma.

To mistakenly deem a defendant competent when he or she, in fact, is not, would be a travesty. In 2003, Grisso reported "defendants who truly are disabled in their ability to mount a defense should not be placed in jeopardy" (p. 70). Not only would an incompetent defendant be unable to properly assist counsel and make appropriate decisions, but chances are that the defendant would not understand a guilty verdict and the sentence which follows. Further, the "dignity, reliability and autonomy of the legal process" would be at risk if incompetent defendants were tried (Stafford, 2003, p. 359). In addition, the unnecessary costs and delays resulting from finding a competent defendant incompetent places an unfair burden on society and the state's resources.

With the court's ruling over 40 years ago in *Dusky v. United States*, 362 U.S. 402 (1960), those in the legal profession and those in the mental health profession, such as psychologists and psychiatrists, have been forced to familiarize themselves a little more with one another's discipline with regard to competency to stand trial (CST). In *Dusky*, the court ruled that it was "not enough for the district judge to find that the defendant [is] oriented to time and place and [has] some recollection of events, but that the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as a factual understanding of the proceedings against him." This landmark decision was the beginning of a very rocky marriage between the legal and clinical professions. The honeymoon is over and now these two unlikely bedfellows must continue to search for ways to communicate and work together in order to ensure the veracity of the legal justice system.

A. Statement of the Problem

The past few decades have seen many articles and textbooks published on the issue of evaluating competency. The primary concerns with forensic evaluations in the 1980's were "ignorance and irrelevance in courtroom testimony, psychiatric or psychological intrusion into essentially legal matters, and insufficiency and incredibility of information provided to the court" (Grisso, 2003, p. 11). Currently, there has been little research examining the attorneys' perceptions and perceived credibility of competence to stand trial evaluations. What research does exist suggests a trend that attorneys believe forensic examiners' reports are inadequate in providing information that they need to properly defend their clients.

B. Purpose of this Study

There have been numerous changes in procedures and state statutes (locally, 22 Okla. Stat. Ann. §1175) for conducting competence to stand trial evaluations over the last 14 years. These changes were presumably made to bolster the quality of competency evaluators and evaluations and to improve the efficiency of the evaluation process. In addition, new measures are available to assess competency. These assessment tools are touted as improvements over previous tests used by evaluators. Since attorneys and courts are the consumers of evaluations, it is important to gauge their opinions and perceptions of the quality of the evaluation process. The purpose of this study was to compare attorneys' perceptions of CST evaluations currently conducted in Oklahoma to the findings of an earlier study conducted by LaFortune and Nicholson (1995). While research in this area is concerned with perceived quality rather than examining actual

report quality, it still provides an important glimpse into the workings of our judicial system. It was hypothesized that there is great similarity in the quality of evaluations, irrespective of the setting in which they are performed, thus eliminating a preference by attorneys for a particular setting. The goal is that the local (outpatient) evaluations are competitive in terms of their report quality as well as examiner experience and training. Additionally, with the extensive forensic training now available to examiners of various mental health professional backgrounds, it was hypothesized that there is an equal preference for psychiatrists, psychologists and all other licensed mental health professionals. Finally, with the aforementioned improvements to the procedural system, it was hypothesized that Oklahoma attorneys may now perceive competency to stand trial evaluations and reports to be more adequate at providing information needed by the attorney and court in assessing a defendant's competency to stand trial.

C. Limitations

One limitation of this study was that the present survey used did not completely replicate the original version used in the LaFortune and Nicholson (1995) study. It was created with the needs of The Oklahoma Indigent Defense System in mind in particular and did not seek the input of district attorneys, prosecuting attorneys or judges. In addition, as in most surveys, some of the attorneys did not respond. However, Dillman (1978) addresses this concern in a text on survey research and reports that a perfect response rate is virtually never achieved. In this study, the response rate of 31% was considered adequate to formulate conclusions about the group of attorneys who responded (Dillman, p. 21). Another limitation was that this study only polled attorneys in Oklahoma.

CHAPTER II.

REVIEW OF LITERATURE

Section 1 of the Fourteenth Amendment provides each person with the right to a fair trial which includes the right to be competently aware of what is taking place in the proceedings. In *Dusky v. United States*, 362 U.S. 402 (1960), the United States Supreme Court established the standard by which all jurisdictions should, at a minimum, determine competency. As the court concluded, the defendant must possess a "rational as well as factual understanding of the proceedings against him" in order to be considered competent. A few years later in *Pate v. Robinson*, 383 U.S. 375 (1966), the Supreme Court held "that the failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial." In 1975, the court further opined in *Drope v. Missouri*, 420 U.S. 162 (1975),"[A] person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial."

It was nearly 20 years later when the Supreme Court made another vital decision regarding competency. The court in *Godinez v. Moran*, 509 U.S. 389 (1993) held that "the competency standard for pleading guilty or waiving the right to counsel is the same as the competency standard for standing trial." The court stated in *Cooper v Oklahoma*, 517 U.S. 348 (1996), that "the defendant's fundamental right to be tried only while

competent outweighs the State's interest in the efficient operation of its criminal justice system" (p. 1383). As will be discussed later, although the court has made a noble effort with its rulings over the past 40 years, the standard for determining competency has yet to be clearly established so that it may be utilized properly and consistently among forensic evaluators.

Focusing locally, the Oklahoma statutes which address competency are found in 22 O.S. §§ 1175.1 – 1175.8. For the purpose of this study, definitions contained in § 1175.1 of the Oklahoma statutes will be used. "Competent" or "competency" means the present ability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him or her and to effectively and rationally assist in his or her defense. "Incompetent" or "incompetency" means the present inability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him or her and to effectively and rationally assist in his or her defense. This definition of competency parallels the standard set forth in *Dusky*.

"Qualified forensic examiner" means any (a) psychiatrist with forensic training and experience, (b) psychologist with forensic training and experience, or (c) other licensed mental health professional whose forensic training and experience enable them to form expert opinions regarding mental illness, competency and dangerousness and who have been approved to render such opinions by the court. (22 O.S. § 1175.1)

"Psycholegal" pertains to those issues which involve the field of psychology and the law. The terms "psycholegal" and "forensic" will be used interchangeably when referencing examiners, examinations, evaluators or evaluations.

A. Past Practices

In their report, Roesch, Zapf, Golding and Skeem (1999) noted that "early evaluators were employed in state mental hospital settings and had no training either in the assessment of competency or in matters of law" (p. 2). These evaluators simply used what means of assessment were readily available and familiar to them which often "were based on the same standard mental status examinations that had been used with other patients in the hospital" (p. 2). The use of a psychological test at that time was "used as a diagnostic tool to determine presence or absence of psychosis," not specifically to evaluate competency (p. 2).

Evaluations were often performed in inpatient psychiatric hospitals within either general units or specialized forensic units (Grisso, 2003). Unfortunately, this method was costly and more restrictive.

In his review of literature, Grisso (2003, p. 11) examines "three primary criticisms of mental health professionals in their assessments in legal cases in the 1980's." The first criticism was "ignorance and irrelevance in courtroom testimony." Examiners offered a diagnosis of a mental disorder, described its symptoms and based competency or incompetency on that fact alone. What was needed was to present "the logic that links those observations to the specific abilities and capacities with which the law was concerned" (p. 13). The examiner must go beyond simply diagnosing psychosis as an essential component in a competency evaluation. "The mere presence of a mental disorder…is not a sufficient basis… for a finding of incompetence" (p. 13).

The second criticism Grisso encountered was "psychiatric and psychological intrusion into essentially legal matters" (p. 15). Examiners would offer an opinion as to

the "ultimate legal question." This issue should be left for the judge or jury to decide as it does not pertain to a clinical issue of which the examiner was asked to testify. The court should be the one to determine a balance between "individual's claim to legal rights of self-determination against the individual's or society's need for protection" (Grisso, 2003, p. 15). In recognizing this aspect, Grisso found "the clinician's offer of an opinion about an examinee's competence or incompetence is an inappropriate intrusion into the role of the legal fact finder" (p. 15).

A third criticism of mental health assessments was "insufficiency and incredibility of information provided to the court" (p. 17). This criticism focused on the examiner's empirical foundation. There was just not enough literature available to support the examiner's opinion, and this led to "the use of theory or informed speculation in the courtroom" (p. 18).

B. Current Guidelines, Practices and Suggestions

Increased research in the arena of forensic evaluation and assessment has prompted and encouraged some changes. Outpatient settings are now the predominate location for evaluations. They are less costly and time consuming than inpatient settings. Private practitioners or forensically specialized clinicians can be used at community mental health centers (Grisso, 2003).

Revisiting the three criticisms reviewed by Grisso (2003), it appears that there has been some overall progress since the 1980's. With regard to the first criticism of ignorance and irrelevance, evaluations have become more legally relevant. The second criticism regarding intrusion continues to be debated. Some researchers feel the examiner should offer an ultimate decision of competence or incompetence while many

disagree. It has been proposed that, at the very least, if they are going to give an opinion, it should be accompanied with an adequate explanation of logic of that opinion. Zapf and Roesch (2003) go as far as to state "a good report should include the evaluator's final opinion as to whether or not a defendant meets the required criteria to proceed" (p. 34). Issues surrounding the third criticism relating to insufficiency and incredibility have declined due to an increase in research which is helpful to provide empirical evidence to support the examiner's findings to prevent reliance on theory alone (Grisso, 2003). Overall: There has been some improvement, however, "progress has been uneven and incomplete" (Grisso, 2003, p. 19).

Another benefit to the field of forensic evaluation is the development and use of "forensic assessment instruments" (a term coined by Grisso). The Competency to Stand Trial Assessment Instrument (CAI), suggests interview questions which focus on the following 13 areas: "1) Appraisal of available legal defense, 2) Unmanageable behavior, 3) Quality of relating to attorney, 4) Planning of legal strategy including guilty pleas to lesser charges where pertinent, 5) Appraisal of role of participants in courtroom, 6) Understanding of court procedure, 7) Appreciation of charges, 8) Appreciation of range and nature of possible penalties, 9) Appraisal of likely outcome, 10) Capacity to disclose to attorney available pertinent facts surrounding the offense, 11) Capacity to realistically challenge prosecution witnesses, 12) Capacity to testify relevantly, and 13) Self-defeating versus self-serving motivation (legal sense)" (Grisso, 2003, p. 122-24).

The Competency Screening Test, the companion for the CAI, consists of 22 incomplete sentences which are to be completed by the defendant. Its purpose is to screen out the clearly competent defendants (Grisso, 2003, p. 130).

The Georgia Court Competency Test – Mississippi State Hospital (GCCT-MSH) consists of 21 questions which are "grouped into six categories as follows: 1) Picture of court, 2) Functions (of participants in the courtroom), 3) Charge, 4) Helping the lawyer, 5) Alleged crime, and 6) Consequences" (Grisso, 2003, p. 116). The GCCT-MSH is best suited as a screening tool.

The MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA) consists of 22 items "organized in three parts called Understanding, Reasoning and Appreciation" with the use of a hypothetical defendant vignette (Grisso, 2003, p. 91).

The Fitness Interview Test – Revised (FIT-R) contains 70 questions (plus 4 background questions) grouped into three categories: "1) Understanding the nature or object of the proceedings: Factual knowledge of criminal procedure, 2) Understanding the possible consequences of the proceedings: Appreciation of personal involvement in and importance of the proceedings, and 3) Communicate with counsel: Ability to participate in defense" (Grisso, 2003, p. 102).

The Evaluation of Competency to Stand Trial – Revised (ECST-R) is a semi-structured interview which focuses on defendant's "factual understanding of the proceedings, rational understanding of the proceedings, and rational ability to consult with counsel" (Otto, 2006, p. 112).

As stated above, some of these assessment instruments are screening procedures which can quickly weed out those defendants who are obviously competent, thus, eliminating the need for more extensive evaluation (Grisso, 2003). If, however, the defendant is found incompetent through the screening assessment, the defendant could be transferred to an inpatient facility for a more extensive evaluation. The use of competence

assessment instruments is crucial, but cannot be the only means to evaluate a defendant's competency. The examiner must still conduct a more comprehensive evaluation (Otto, 2006, p. 102).

Some states have set out specific guidelines to aid the forensic evaluator in the competency assessment procedure and report writing. The following is a summary of some of those guidelines and suggestions for report content as found in articles written on the subject in Florida, Texas, Missouri, and Illinois.

In an article by Zapf and Roesch (2003), the authors attempted to bridge the gap between psychologists/psychiatrist (mental health professionals) and judges/lawyers by conveying the expectations of competency evaluations to those in the legal profession. "A good competency report will set out each of the specific criteria that are required within the jurisdiction and will offer an opinion as to whether the defendant meets each of the specific criteria" (Zapf & Roesch, 2003, p. 33).

According to their article, there are two areas which must be addressed in a forensic evaluator's report:

1. the defendant's current clinical presentation (including test results, diagnosis), and
2. the defendant's ability to proceed to trial. (Zapf & Roesch, 2003, p. 33)

They further report that the "Florida Rules of Criminal Procedure" provide a checklist of elements to be contained in a report:

- the specific matters referred for evaluation,
- the evaluative procedures, techniques and tests used in the examination and the purpose or purposes for each,

- the expert's clinical observations, findings, and opinions on each issue referred for evaluation by the court, indicating specifically those issues, if any, on which the expert could not give an opinion, and
- the sources of information used by the expert and the factual basis for the expert's clinical findings and opinions. (Zapf & Roesch, 2003, p. 34)

Otto (2006, p. 87) researched the responsibilities of the forensic examiner in Texas which are listed as follows:

1. Assess and describe the defendant's capacity to understand and participate in the legal proceedings.
2. Identify and describe any mental disorders and impairments, broadly defined, that may be responsible for impaired capacities that are noted and described.
3. If finding of incapacity, identify if the mental disorder(s) or impairment(s) that are considered responsible for the observed and described deficits can be treated so as to restore the defendant's capacity (and identify those treatments).

Texas law directs that its forensic evaluation reports contain the following:

1. an opinion as to the defendant's competency;
2. identification and discussion of any specific issues referred to the examiner by the court;
3. documentation of appropriate disclosures made to the defendant about the evaluation and report;

4. a listing of procedures, techniques, and tests used in the evaluation and the purposes of each;
5. observations, findings and conclusions on each issue referred for evaluation (or a statement of the reasons why such findings could not be made); and
6. if the defendant is considered by the expert to be incompetent, a description of the deficits and their relationship to the functional abilities required for competence, as well as treatment recommendation. (p. 86)

According to the Missouri Institute of Mental Health Policy Brief (2003), "a defensible CST evaluation should address the following issues using direct quotations from the defendant whenever possible" (p. 2):

1. The defendant's ability to understand the charges, including:
    - the legal and practical meaning of these charges;
    - the implications of his/her current legal situation;
    - the roles and functions of the courtroom personnel; and
    - the ability to differentiate between various pleas and verdicts.
2. The defendant's ability to assist in his/her defense, which includes:
    - describing his/her behavior and whereabouts at the time of the alleged crime(s);
    - effectively interacting with defense counsel; and
    - behaving in an appropriate manner in the courtroom.

The current competency statutes in Illinois are recommended by Roesch, et al. (1999) as a model to all forensic examiners:

1. address the facts upon which the conclusion is based,
2. explain how the conclusion was reached,
3. describe defendant's mental and physical disabilities and how these impair the ability to understand the proceedings and assist in the defense,
4. discuss the likelihood that defendant will respond to a specified course of treatment, and
5. explain procedures that would be employed to compensate for defendant's disabilities. (p. 14)

As is evident by the detailed suggestions and guidelines offered in just the few states mentioned above, forensic evaluators are being asked and expected to perform more comprehensive evaluations and submit reports which are more legally relevant and detailed as to their final decisions of competency or incompetency. It is no longer sufficient to diagnose a psychosis or mental disorder and deem the defendant incompetent from just that diagnosis.

C. Changes in Oklahoma Statutes and Procedures

Since the collection of data for the original LaFortune and Nicholson study (in 1992), there have been significant changes in Oklahoma statutes and procedures regarding competency to stand trial evaluations. Instrumental in the implementation of these changes was the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) - Forensic Services led by William Burkett, MSW, Director of the Oklahoma Forensic Center, Jeanne Russell, Ed.D., Director of Psychology, Social Work and Training, and Paul Lanier, M.D., Clinical Director.

In a personal interview with Dr. Jeanne Russell, she described her perception of changes in clinical practices, statutes, and the structure born out of these changes since the LaFortune and Nicholson data were gathered in 1992:

> At the time the LaFortune and Nicholson study was conducted, the Oklahoma Forensic Program was not a separate entity but was contained within a state facility (Eastern State Hospital) designed primarily for the treatment of the chronically mentally ill. The Forensic Program occupied a small proportion of hospital beds as compared to beds dedicated for the care of the chronically mentally ill. During the 1980's and early 1990's, CST evaluations were conducted by psychiatrists and, at times, psychologists, depending on the staff available. Reports were brief, with examiners primarily answering *yes* or *no* to the statutory questions. The bases of these responses were provided if the mental health professional had to testify, as the belief at that time was that further elaboration provided ammunition for cross-examinations and increased the chances that the examiner would have to testify in court. (J. Russell, personal communication, June 23, 2007)

A summary of significant changes in laws, procedures and policy for conducting CST evaluations since the original 1992 data includes:

- Training: The Oklahoma Department of Mental Health – Forensic Services division began providing CST evaluation training to persons responsible for conducting outpatient evaluations.

- Mental Health Professionals: There was a gradual shift from the use of psychiatrists to psychologists to conduct CST evaluations, presumably to cut down on costs and preserve medical resources for patient care.
- Oklahoma Forensic Center: As a result of the enactment of Senate Bill 149[2] in 1999, Eastern State Hospital was given a two-year period to reduce the number of its patients and staff and to redistribute the patients throughout community mental health centers in Oklahoma. This resulted in a center designed almost exclusively for a forensic population replacing the civilly-dominated hospital where forensic patients were merely housed. Soon thereafter, the name of Eastern State Hospital was changed to Oklahoma Forensic Center.
- Oklahoma Forensic Mental Health Services Manual: In July 15, 2001, ODMHSAS created a manual with the intention of "assisting mental health professionals responsible for providing evaluations and/or services to the court for defendants charged with a crime." Additionally, it had the potential of being useful to "attorneys and judges in understanding the evaluation [process]…" (ODMHSAS, p.1). The manual consists of, among other things, information regarding the legal standard for competency, statutory-defined terms, suggested guidelines for conducting a CST evaluation, and an overview of competency assessment tools. The manual encourages forensic evaluators to familiarize themselves with

[2] "An Act relating to mental health; stating duties of the Department of Mental Health and Substance Abuse Services for reducing inpatient care at Eastern State Hospital and providing procedures, etc." (1999 O.S.L. 270 [SB 149]).

licensing laws as well as ethical guidelines as outlined in publications such as the *Specialty Guidelines for Forensic Psychologists*[3] (p. 13).

- A shift in evaluating models[4]: In 2000, §1175.3 was revised to require that a defendant's competency to stand trial evaluation must be performed in the community (on an outpatient basis) prior to his being committed to OFC (for an inpatient evaluation). Generally, the initial outpatient evaluation weeds out those defendants who are obviously competent, thus, suppressing the need for a further inpatient evaluation. It is assumed that this shift from a predominantly Institution-Based, Inpatient Model to a Mixed Model was done for cost saving reasons. State resources are saved if CST evaluations are first performed in the community resulting in fewer referrals for the more costly inpatient evaluations.
- Definition of Forensic Examiner: Before November 1, 2000, a "person could conduct a competency evaluation if he or she was a 'doctor.'" (ODMHSAS, p. 6) In 1992, §1175.1 defined doctor as "any physician, psychiatrist, psychologist or equivalent expert." It was determined that, due to the complexities of legal standards, forensic examinations should not be performed by an amateur examiner. The current statute reads: "a 'qualified forensic examiner' is any (a) psychiatrist with forensic training and experience, (b) psychologist with forensic training and experience, or

[3] The *Specialty Guidelines for Forensic Psychologists* was created by the Committee on Ethical Guidelines for Forensic Psychologists with a primary goal "to improve the quality of forensic psychological services offered to individual clients and the legal system and thereby to enhance forensic psychology as a discipline and profession" (Committee, 1991, p. 655).

[4] "At least four models for delivering forensic evaluations on a system-wide basis can be imagined: the traditional institution-based inpatient model, the institution-based outpatient model, the community based private practitioner model, and a mixture of these models" (Melton, 1997, p. 98).

(c) other licensed mental health professional whose forensic training and experience enable them to form expert opinions regarding mental illness, competency and dangerousness and who have been approved to render such opinions by the court." (ODMHSAS, p. 5) The current standard emphasizes the necessity that the forensic examiner be licensed, trained and experienced.

In addition to the above list, the questions posed to the Oklahoma forensic examiner for consideration regarding the defendant have changed since 1992 as reflected in the following chart:

	22 O.S. § 1175.3(E) (1992)	22 O.S. § 1175.3(E) (2006)
1	Is the person able to appreciate the nature of the charges against him?	Is the person able to appreciate the nature of the charges made against such person?
2	Is the person able to consult with his lawyer and rationally assist in the preparation of his defense?	Is the person able to consult with the lawyer and rationally assist in the preparation of the defense of such person?
3	If the answer to question 1 or 2 is no, can the person attain competency within a reasonable time if provided with a course of treatment, therapy or training?	If the person is unable to appreciate the nature of the charges or to consult and rationally assist in the preparation of the defense, can the person attain competency within a reasonable period of time as defined in Section 1175.1 of this title if provided with a course of treatment, therapy or training?
4	Is the person a mentally ill person or a person requiring treatment as defined Section 1 – 103 of Title 43A of the Oklahoma Statutes?	Is the person a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes?
5	If the person were released without treatment, therapy or training, would he probably pose a significant threat to the life or safety of himself or others?	Is the person incompetent because the person is mentally retarded as defined in Section 1408 of Title 10 of the Oklahoma Statutes?
6	N/A	If the answers to questions 4 and 5 are no, why is the defendant incompetent?
7	N/A	If the person were released, would such person presently be dangerous as defined in Section 1175.1 of this title?

It appears that an earnest attempt has been made over the past 14 years to improve and clarify the evaluation process and criteria necessary to determine a defendant's competency to stand trial. This study attempts to determine whether those improvements

have affected Oklahoma attorneys' perceptions of the quality of CST evaluations and the accompanying reports.

D. Impact of Improved Standards and Statutes

Having reviewed the expectations of the forensic evaluator in a few sample states, a look at the empirical research is necessary to determine whether or not these guidelines have had an impact in the field of forensic evaluation of competency.

In 1995, Borum and Grisso surveyed forensic psychologists and psychiatrists regarding their use of psychological testing in competency to stand trial evaluations as well as their opinion of the importance of the use of such tests. The respondents were asked to "rate the importance of *psychological testing* [italics added] (defined as intellectual, objective, or projective tests and instruments designed for clinical evaluations, e.g., WAIS-R, MMPI, and Rorschach) and *forensic assessment instruments* [italics added] (defined as tests or instruments that were specifically designed to address legal issues, e.g., Competency to Stand Trial Assessment Instrument, Competency Screening Test)" (p. 466). The combined responses from forensic psychologists and psychiatrists revealed that 48% viewed psychological tests as essential or recommended, while 52% viewed them as optional. Forty-five percent (45%) reported that they use the psychological tests frequently or almost always, and 50% only sometimes or rarely used these tests. However, with regard to forensic instruments, 28% almost always or frequently use this type of tests, 27% sometimes or rarely use them, and 46% never use them (Borum & Grisso, 1995). It is noteworthy that nearly one-half of the evaluations conducted by forensic psychologists and forensic psychiatrists for competency to stand trial do not even use the instruments designed specifically for these types of evaluations.

Skeem and Golding (1998) took a look at the fundamental problems with clinical psychologists' reports on competency to stand trial and provided recommendations for improvement. Judges rely heavily on the evaluations of forensic examiners yet "most jurisdictions neither set minimum standards for designating mental health professionals as forensic examiners nor provide examiners with systematic state–supported training" (p. 357). As surmised in their study, Skeem and Golding identified "three central problems with examiner's reports" (p. 357). They found that the reports failed to:

1. adequately address fundamental CST abilities, including defendant's decisional competence,
2. present the critical reasoning underlying one's psycholegal conclusions, and
3. use forensically relevant methods of assessment. (p. 358)

These three areas of concern are what Skeem and Golding suggest need the most attention when creating a report on a competency to stand trial evaluation.

In their analysis of current reports, Skeem and Golding found that emphasis was placed on "minimal competence abilities" and little attention was paid to "higher-order decisional capacities" (p. 360). While 70% of the reports addressed "the defendant's appreciation of charges, potential penalties, adversarial nature of proceedings and the defendant's capacity to disclose information to attorney," just over 10% addressed "the defendant's implications of a guilty plea" (p. 360).

Examiners seem to have a more difficult time providing enough reasoning to support their decisions regarding competency than they do with their conclusions regarding a mental disorder. "It is critical that examiners assess and specifically

substantiate any links between defendant's CST impairments and psychopathology" (Skeem & Golding, 1998, p. 360). The researchers realized "the most critical function is not to provide an opinion, but to advise the court of defendant's specific abilities and deficits and explain expert's reasoned inferences about the bases for those deficits" (p. 358).

In Skeem and Golding's (1998) study, 25% of the reports used clearly relevant competency assessment instruments, but 69% of reports used traditional psychological instruments (i.e. WAIS, MMPI). It is suggested that "competency-specific measures should be used more routinely because they are strongly associated with determinations of CST and promote good inter-examiner reliability" (p. 364).

The conclusions reached by Skeem and Golding (1998) were that those examiners not specifically trained in competency evaluations tended to "rely on traditional clinical skills and attempt to generalize those to psycholegal assessments" (p. 365). Even though psychological functions were thoroughly tested, the examiners seldom used the more appropriate instruments for assessing competency. In essence, the reports generated by these examiners tended to be "modified standard clinical reports" and did not adequately address the issue of competency (p. 365).

A study by Morris, Haroun and Naimark (2004), entitled "Competency to Stand Trial on Trial," states its purpose was to examine "legal standards for the determination of competency to stand trial, and whether these standards are understood and applied by psychiatrists and psychologists in the forensic evaluations they perform and in the judgments they make." This study was important because it actually assessed whether or

not the evaluators and examiners are able to comprehend the guidelines and suggestions that have been offered to them.

Using three standards ("rational understanding," "rational manner" and the "properly assist" standard under federal statutory), the objective of Morris, et al.'s study was to:

1. determine whether forensic evaluators would distinguish between the standards (i.e. find the defendant competent under one standard but not under another), and
2. determine whether they would find the defendant competent under all (3) standards or incompetent under all. (Morris, et al,. 2004, p. 12)

Having established two separate cases to be "evaluated" (one, the defendant was irrational in his thinking but rational in his manner; and the other, the defendant was rational in her thinking but irrational in her manner and behavior), Morris, et al. found that the results were inconsistent with their hypotheses.

In the first case, the defendant "should have been found incompetent under *Dusky's* 'rational understanding' standard and the federal statutory (assist properly), but not under the 'rational manner'" (Morris, et al,. 2004, p. 35). The results showed that only 0.8% came to that conclusion. In fact, when analyzing the facts under the same *Dusky* rational understanding standard, 128 (47.6%) of the respondents found the defendant competent while 141 (52.4%) found the defendant incompetent (p. 33). In addition, when analyzing the facts under the properly assist federal statutory standard ("a standard interpreted by the Supreme Court to be the *Dusky* standard), 130 (49.2%) respondents

found the defendant competent and a nearly equal number (134, or 50.8%) found the defendant incompetent (p. 34).

The results for the second case were that only 2.5% reached the hypothesized conclusion that "defendant should have been found competent under *Dusky's* 'rational understanding' standard and the federal statutory (assist properly), but incompetent under the 'rational manner'" (Morris, et al,. 2004, p. 35). The respondents were more in agreement in analyzing this second vignette under the *Dusky* standard with 169 (70.1%) respondents finding the defendant competent and 72 (29.9%) finding the defendant incompetent (p. 34).

The results of Morris, et al.'s (2004) study strengthened their motivating concern that a defendant cannot be truly fairly assessed if the standard by which the evaluators must use to assess competency is not "clearly defined and applied" (p. 12). By their results, "the defendant's fate depends only on who performed the evaluation" (p. 36).

While their opinion is certainly important, forensic evaluators are only a part of the competency to stand trial equation. Few articles have been written on the attorneys' and judges' perceptions of the mental health evaluations, yet clearly there is a need for more in order to facilitate a better understanding between the two fields. LaFortune and Nicholson (1995) were able to obtain very helpful and valuable information from attorneys and presiding district judges in two counties in Oklahoma. More specifically, LaFortune and Nicholson addressed:

- The frequency with which these attorneys perceived defendants to be incompetent and their rates of referral for competency assessment,

- Attorneys' perception of the quality of the reports submitted by mental health professionals,
- Attorneys' preference for evaluations performed by particular types of mental health professionals,
- Attorneys' opinions regarding the relative validity and adequacy of evaluations by different mental health professionals,
- Attorneys' preferences for particular sites (outpatient vs. inpatient), and
- Attorneys' judgments about the frequency with which competency reports in Oklahoma included descriptions of relevant psycholegal and psychopathological characteristics. (p. 236-37)

The respondents reported that "competency was a legitimate issue in about 5% of criminal cases" and that only about two-thirds of those were actually referred for competency evaluations. (LaFortune & Nicholson, 1995, p. 240-41). The respondents also preferred psychiatrists over psychologists, physicians, social workers or other mental health technicians. Respondents also preferred outpatient over inpatient evaluations and even "judged outpatient reports to be of better quality" (p. 246). Attorneys reported concerns with the quality and content of the reports which could be grouped into 4 categories: "1) request for specificity, 2) permanence of competency and behavioral inconsistency, 3) questions about the validity of findings of competency following treatment, and 4) requests for specifics pertaining to *M'Naughten*[5]" (p. 248-250). From these concerns, the need for specialized training in report writing is evident. As

[5] The M'Naughten Rule is used in insanity defenses. The rule states "to establish a defense on the ground of insanity, it must be clearly proven that, at the time of the committing of the act, the party accused was laboring 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" (ODMHSAS, p. 10; *M'Naughten's Case* (1843), *10 C & F 200*).

LaFortune and Nicholson (1995) commented, however, the request for specifics pertaining to *M'Naughten* would fall outside the scope of competency evaluation and into the matter of insanity, which are two very distinct areas. From this request, it is suggested "that attorneys, too, need additional education and training…concerning the ethical and practical considerations that constrain the work of forensic examiners" (p. 256-57).

It is upon LaFortune and Nicholson's study that the current study was based. As stated earlier, little research has been conducted in which the perception of attorneys has been explored in relation to competency to stand trial evaluations. A second look at new data received nearly 15 years after the initial inquiry could prove useful in evaluating the status of the report and the report writers (namely forensic examiners).

CHAPTER III.

METHODOLOGY

A. Participants

The participants were noncapital, capital, general appeals and post conviction trial attorneys who are employed by or who have been contracted to provide legal services for The Oklahoma Indigent Defense System (OIDS). According to information on the agency's website, OIDS is a state agency whose mission is "to provide indigents with legal representation comparable to that obtainable by those who can afford counsel and to do so in the most cost effective manner possible." The agency also represents those facing the death penalty as well as those who have received the death penalty or other term of years and are appealing their sentences. These attorneys are "appointed by the courts to represent all adult and juvenile indigents in 75 counties who are charged in felony, misdemeanor and traffic cases punishable by incarceration." All Oklahoma counties, with the exception of Tulsa and Oklahoma, are serviced by OIDS.

B. Instrument

The survey (Appendix A) and accompanying cover letter (Appendix B) were prepared by Kathryn A. LaFortune, Ph.D., Chief of Psychological Services of OIDS, and Craig Sutter, Deputy Executive Director of OIDS, in accordance with suggestions by Dillman in his book *Mail and Telephone Surveys: The Total Design Method* (1978). The

survey content was taken from the previous one created and used in the 1995 LaFortune and Nicholson study. The focus of the survey was on attorneys' preference of professional performing evaluation (i.e., psychologist [masters level], physician [non-psychiatrist], social worker [masters level], psychologist [Ph.D.], psychiatrist [M.D. – D.O.], or other licensed mental health professional as provided by Oklahoma statutes), preference of location of evaluation (local vs. OFC, or inpatient vs. outpatient), and their perception of the quality of the competency report. The survey was 6 pages in length and consisted of 18 questions. Item 1 asked the respondent to report the number of their clients whom they had referred for CST evaluations in the past two years. One question related to both the professional and location aspects by requesting that the respondent identify the professionals whom they have used in the past 2 years (Item 2). Additionally, the survey contained 10 statements related to the location of the evaluations (outpatient [local] versus inpatient (Oklahoma Forensic Center [OFC]). Items 3 and 4 asked participants to choose among options given where they currently and where they would like to have evaluations performed, respectively. Items 5 through 9 requested participants to rate, on a five-point Likert scale, their range of agreement with statements regarding evaluations performed locally or at the OFC (Item 5: timeliness of reports, Item 6: evaluator's familiarity of legal issues, Item 7: clear and understandable language of reports, Item 8: explanation of factual basis of evaluator's conclusions, and Item 9: useful information contained in reports). The participants were asked about the overall quality of the competency evaluations and were asked to rank this on a five-point Likert scale for each setting (local and OFC) (Item 10). Participants were asked to rate each location regarding change in quality of the reports in the past 3 years (Item 11). Item 12 asked the

participants if they would prefer to receive a report locally or from OFC if the examiners were equally skilled. There were 2 questions related specifically to the professionals which conduct CST evaluations. The participants were asked to rank their preference of professionals as well as rate the validity of the evaluations from these various professionals (Items 13 and 14, respectively). In addition, participants were asked to rate the content of CST reports by indicating on a five-point Likert scale the extent that the reports account for certain competency criteria and, furthermore, the extent that the reports *should* account for certain criteria (Items 15 and 16, respectively). Item 17 asked the respondents an open-ended question requesting suggestions for other elements they believe should be contained in an evaluation report. Finally, respondents were asked for further comments regarding CST evaluations in general at Item 18.

C. Procedure

The survey and cover letter were sent via electronic mail from the OIDS central office to approximately 152 participants in the Fall of 2006. The participants were asked to return their responses via electronic mail. Identifying information on the survey responses was redacted by the OIDS staff member in charge of collection to ensure confidentiality. After an initial review by the Institutional Review Board (IRB), it was determined that this study would be exempt from full board review due to the confidentiality measures in place (Appendix C). The collected surveys were then given to this author. The data were coded, analyzed and reported in a descriptive format. The results from this study were also analyzed and compared to those from the original study by LaFortune and Nicholson. Between group comparisons were performed using student t-tests. A p value less than 0.05 ($p < 0.05$) was established as significant.

CHAPTER IV.

RESULTS

Of the 152 participants polled, 47 completed surveys were returned (a return rate of 31% as compared to 43.0% in the original LaFortune and Nicholson study). On the average over a 2 year period, participants perceived competency as a legitimate issue with approximately 5 of their clients (M = 5.207, SD = 6.331, range = 0-40). Only a small percentage of the total sample (9%) had never referred a defendant for a competency evaluation.

The participants were asked where they currently have evaluations performed (locally or at the Oklahoma Forensic Center). Over one-half of the participants responded that evaluations were currently performed both locally and at OFC (53.33%). Approximately one-third reported that evaluations were done locally (28.89%) and nearly one-fifth were performed at OFC (17.78%). The participants were then asked at which location they preferred to have evaluations performed (locally or OFC). The responses showed no strong preference for either site. Nearly one-quarter of the participants reported a preference for evaluations to be conducted locally (24.44%). Over one-third reported a preference for evaluations to be conducted at OFC (35.56%) and close to one-half (40.00%) had no preference. When asked their preference for evaluation sites with the assumption that all mental health professionals were equally skilled, a little more than one-third of the participants preferred the evaluation be performed locally (36.36%),

nearly one-third preferred the evaluations to be performed at OFC (29.55%), and a little over one-third (34.09%) had no preference either way. Again, the respondents showed no strong preference as to where evaluations should be performed assuming evaluator qualifications were equivalent. Appendix D shows the above results in **Tables 1**, **2** and **3**, respectively.

The participants were then asked to indicate their level of agreement with statements regarding characteristics of evaluations from each site (locally or OFC). Using a five-point Likert scale (1 = *strongly disagree*, 2 = *somewhat disagree*, 3 = *undecided*, 4 = *somewhat agree*, 5 = *strongly agree*), respondents were asked to scale each of the following characteristics: (a) reports are timely, (b) examiners are familiar with legal criteria, (c) examiners use understandable language, (d) examiners give factual basis for conclusions, and (e) reports are useful in decision-making. The overall quality of the reports used a five-point Likert scale as well (1 = *very poor*, 2 = *fair*, 3 = *average*, 4 = *good*, 5 = *excellent*).

With regard to local evaluations, respondents were a little more than "undecided" with the statements that reports are timely ($M = 3.77$, $SD = 1.00$), the examiners were familiar with legal criteria and issues ($M = 3.40$, $SD = 1.34$), the examiners use understandable language ($M = 3.81$, $SD = 1.19$), the examiners give factual basis for conclusions ($M = 3.24$, $SD = 1.36$) and the reports are useful in decision-making ($M = 3.24$, $SD = 1.18$). As compared to the previous study, there was a significant difference in the mean responses for three of the characteristics: examiners are familiar with legal criteria and issues ($p = 0.0009$), examiners give factual basis for conclusions ($p = 0.01$) and the reports are useful in decision making ($p = 0.0002$). This decrease points to a

trend that attorneys currently agree less that the examiners are familiar enough with the legal criteria or that they provide enough of a factual basis for their findings. Additionally, it seems that the reports are not viewed as very useful in determining competency. **Figure 2** at Appendix D provides a graph comparing these data.

Attorneys did not strongly endorse that the current reports were higher quality than OFC reports. In fact, there was a decline in the rating for overall report quality for local reports, previously rated between "average" and "good" to a current rating between "fair" and "average" ($M = 2.95$, $SD = 1.07$) resulting in a significant ($p = 0.0000003$) difference between the previous data and the current data. Notably, the overall quality item represented the lowest level of agreement for attorneys regarding local evaluations. **Table 4** and **Figure 3** at Appendix D detail these results.

With respect to reports performed at OFC, participants remained ambivalent about the characteristics of those reports. The current average ratings for report characteristics were scored slightly above "undecided" but just below "somewhat agree" (reports are timely [$M = 3.94$, $SD = 0.89$], examiners were familiar with legal criteria and issues [$M = 3.75$, $SD = 1.20$], examiners use understandable language [$M = 3.86$, $SD = 0.96$], examiners give factual basis for conclusions [$M = 3.22$, $SD = 1.27$], and reports are useful in decision-making [$M = 3.22$, $SD = 1.22$]). As is evidenced by the reported averages, participants provided no resounding endorsement of any of the report characteristics that they were asked to rate. However, there was a significant ($p = 0.006$ and $p = 0.04$) increase in the mean responses from the 1995 OFC results to the current OFC results for the category of report timeliness and use of understandable language, respectively. These findings suggest a possible trend that attorneys perceive the OFC

reports to be timelier and contain more understandable language than in the past. Again, **Figure 2** at Appendix D provides a graph comparing these data.

Further, participants found that overall report quality of those performed at OFC had increased only slightly since the previous study but not significantly. The current mean ranking for OFC overall report quality was between "average" and "good" (M = 3.21, SD = 1.22). The mean ranking for the same reports in the 1995 study was between "fair" and "average" (M = 2.88, SD = 1.13).

On the whole, the respondents expressed nearly the same level of satisfaction ("undecided") with OFC evaluations as with local evaluations. There was no clear preference for one setting over the other. The average overall report quality of local evaluations was just below "undecided" while the average overall report quality of OFC evaluations was just above "undecided." **Table 4** and **Figure 3** at Appendix D detail these results.

When participants were asked their perception of whether the quality of competency evaluations have improved, declined or remained the same over the past three (3) years for each setting (local and OFC), the majority of the responses indicated that the quality has remained the same for both. Regarding local evaluations, 5.56% perceived that evaluation quality had improved, 11.11 % perceived a decline in quality and 83.33% reported that the quality has not changed. Regarding evaluations conducted at OFC, over one-fourth (25.93%) of the attorneys perceived a decline in quality with only 7.14% reporting improvement. Over two-thirds (66.67%) of the respondents reported that the quality of reports performed locally has not changed. Ultimately, the

quality of evaluations in both settings is thought to have not changed substantially during the past three years. **Table 5** at Appendix D shows these results.

The participants were asked to rank six (6) professionals as to their preference for conducting competency evaluations (psychologist [masters level], physician [non-psychiatrist], social worker [masters level], psychologist [Ph.D.], psychiatrist [M.D. – D.O.], or other licensed mental health professional as provided by Oklahoma statutes). From the total of 47 respondents, 40 ranked all six types.

A majority of the respondents ranked psychiatrists as their first preference for competency evaluations among professionals (54.76%). Considering the previous research of public perception of credibility of mental health professionals and as was addressed in the previous study, the mean ranking of psychiatrists and psychologists against each other was particularly interesting.[6] As compared to psychiatrists, psychologists (Ph.D. level) were ranked first by over 43% of the respondents (43.18%).

Both psychiatrist and psychologist (Ph.D. level) were ranked comparably and both were considerably higher than the mean ranking for all other professional groups (psychiatrist [M.D. – D.O.] $M = 1.62$; psychologist [PhD level] $M = 1.73$; psychologist [masters level] $M = 2.73$; physician [non-psychiatrist] $M = 4.73$; social worker [masters level] $M = 4.93$; and other licensed mental health professional as provided by Oklahoma statutes $M = 5.18$).

[6] For further research regarding perceived credibility, the reader is directed to studies suggested in the previous study: Michael L. Perlin, (1980). The legal status of the psychologist in the courtroom. *4 Mental Disability Law Reporter*, 194–200; and J. Greenberg & A. Wursten (1988). The psychologist and the psychiatrist as expert witnesses: Perceived credibility and influence. *19 Prof. Psychol. Res. & Prac.* 373-378.

Of interest is the mean rating for the category of other licensed mental health professionals.[7] As defined in the Oklahoma statutes, other licensed mental health professionals should be just as skilled as any other qualified forensic examiner. This suggests that, despite endorsement by the Court, attorneys still rank these other licensed mental health professionals much lower than all others. Taken as a whole, it appears that preferences for mental health professionals are still similar to those expressed in the previous study. Mean rankings from both the current and the previous study, for each of the six types of professionals are provided in **Table 6** at Appendix D.

Participants were also asked to rate the validity of the evaluations from these various professional groups in Item 14. However, this item was stricken due to an apparent misunderstanding with the phrasing of the question on the survey. Item 14 on the survey requested "Please *rank* the following professionals as to how valid you consider their competency evaluations (1 indicates always valid, 2 indicates usually valid, 3 neutral/undecided, 4 usually invalid, 5 always invalid)." The preceding question (Item 13) also used the word rank (e.g., "Please *rank* the following professionals as to your preference for their competency evaluations of your clients. [1 indicates first choice, 2 indicates second choice, and so on]"). Both items were then followed by the aforementioned list of six professional groups. Many respondents listed the same answers in Item 14 as in Item 13. Since the options for Item 14 did not include a sixth choice, it was recognized that those respondents who included a 6 in their answer to Item 14 had merely repeated their answer from the preceding question. Therefore, no analysis

[7] As defined in O.S. § 1175.1, one "whose forensic training and experience enable them to form expert opinions regarding mental illness, competency and dangerousness and who have been approved to render such opinions by the court."

was performed with regard to this particular item on the survey. A substitution of *rate* for *rank* in Item 14 may well have alleviated this confusion.

Respondents were asked to rate the content of CST reports by indicating on a five-point Likert scale the extent that the reports account for certain competency criteria (1 = *never*, 2 = *rarely*, 3 = *sometimes*, 4 = *often*, 5 = *always*). The criteria selected for the survey were, for the most part, identical to the suggested interview questions contained in the Competency to Stand Trial Assessment Instrument. Nine out of 14 of the defendant characteristics were referenced "rarely" to "sometimes" ($2.00 \leq M < 3.00$). Those characteristics were quality of relating to attorney, understanding of attorney-client privilege, understanding plea bargaining processes, planning of legal strategy, self defeating motivation, capacity to testify relevantly, unmanageable behavior, concentration, and memory.

Two specific characteristics, quality of relating to attorney and memory, are currently being reported less often than in the previous study. Four out of 14 of the characteristics were mentioned "sometimes" to "often" ($3.00 \leq M < 4.00$) (e.g., appraisal of key figures in court, understanding of court room procedure, capacity to disclose pertinent facts, and thought disorders).

Only one characteristic, appreciation of charges, was mentioned more than "often." This is consistent with the previous study. In only one case (appraisal of key figures in court) was there any improvement in the frequency in which it is mentioned in competency reports. While it appears that ratings of the frequency of actual defendant characteristics in reports have declined slightly, the differences in the current means and those of the previous study are not remarkable. **Table 7** and **Figure 4** at Appendix D

contain a more detailed list of these results as well as a comparison of what was actually reported in 1995 to what was currently reported.

When respondents were asked to what extent the reports *should* account for certain defendant characteristics, the responses indicated that they would like all 14 of the aforementioned characteristics reported more than "often" and very close to "always" ($4.00 \leq M < 5.00$). There was a significant ($p < 0.0001$) difference for all characteristics as to what is currently actually being described in reports and what attorneys would optimally like to see in reports. See **Figure 5** at Appendix D.

In contrast, the previous study reported that optimally 10 out of 14 of the characteristics should be reported more than "often." It is apparent that participants, in their capacity as defense attorneys, want more information in competency reports. This attitude has not considerably changed from the previous study. **Table 8** at Appendix D lists the optimal frequency for describing defendant characteristics in reports. **Figure 6** at Appendix D depicts a graph comparing what was reported as optimal in 1995 and optimal currently.

Specifically, the results of these particular questions regarding report content illustrate two important findings. First, the actual quality of the content of competency reports has not changed since the original data collection in 1992. Second, attorneys still believe that there are certain characteristics that are essential and must be contained in every competency report. The optimal ratings currently are even higher than those reported in 1995, indicating that perhaps attorneys have raised their expectations and require this type of information even more than before.

Participants were then asked their opinion and given the opportunity to list defendant characteristics that they would like to see on competency reports in addition to the 14 items listed above. **Table 9** at Appendix D gives a full narrative of these responses.

Approximately one-half of the respondents had contributed a comment to this question. Many responses echoed those reported in the previous study. Respondents would like to see more specific information in competency reports such as education level, IQ, past history, substance abuse, and a list and explanation of what procedures were used to determine competency.

While there were many varied responses, many participants' responses tended to circulate around two central points: mental health/mental retardation issues and medication. With regard to mental health/mental retardation issues, one respondent wrote "the specific mental disorder of the defendant should be listed and explained, if applicable and known." Another responded, "I believe reports should include clarification of mental health issues as set forth in [Okla. Stat.] 43A§1-103[8] and how those issues relate to competence."

Respondents also indicated they would like to see more information in competency reports regarding the defendant's past, current and future use of medications. More specifically, one respondent wanted to know "an estimation of time client will be competent after being discharged from treatment, especially if medicated to competency." Respondents indicated they, in their capacity as defense attorneys, want to

[8] This act states: "(A). The purpose of the Mental Health Law is to provide for the humane care and treatment of persons who: (1). Are mentally ill; or (2) Require treatment for drug or alcohol abuse, and (B). All such residents of this state are entitled to care and treatment in accordance with the appropriate standard of care." Okla. Stat. 43A§1-103.

know the effects of any medications as well as the effects of medication withdrawal on their client.

The final question of the survey offered a chance for participants to provide any further comments regarding competency evaluations in general. Nearly one-half of the participants responded to this question as well. Respondents indicated they would like more detailed reports, better competency laws, and more comprehensive tests to determine the relationship between competent to stand trial and mental illness.

Primary concerns reported involve a perceived bias of reports toward the prosecution from evaluations performed at OFC as well as an abundance of malingering diagnoses. One respondent wrote "the newest trend is to find defendant competent and malingering even though the defendant is prescribed medications." Another respondent suggested that examiners "review a client's history of mental illness (prior to charges) in assessing malingering rather than testing alone." A couple of respondents went so far to say that "competency evaluations in Oklahoma are a joke" and "OFC evaluations have become a farce." **Table 10** at Appendix D gives a full narrative of these responses as well as other comments which were noted elsewhere on some of the surveys.

CHAPTER V.

DISCUSSION

The purpose of this study was to address the deficit in research regarding Oklahoma attorneys' perceptions and opinions of competency to stand trial evaluations. It was hypothesized that there is currently no preference among attorneys as to the setting of the evaluation due to the similarity in the quality of evaluations. It was also hypothesized that there is now an equal preference among professionals with current availability of extensive forensic training to examiners of various mental health professional backgrounds. Finally, it was hypothesized that Oklahoma attorneys may now perceive competency to stand trial evaluations to be more adequate at providing essential information due to improvements over the past decade.

In the current study, attorneys appeared to have no strong preference for either evaluation site (locally: 24.44%; OFC: 35.56%; and no preference: 40.00%). In contrast, the previous study reported "66.4% preferred to have evaluations done locally," while a mere 9.3% preferred inpatient evaluations.[9] It was further reported that "24.3% had no preference" (LaFortune & Nicholson, 1995, p. 243). This finding supported the hypothesis.

[9] In the LaFortune and Nicholson study, inpatient evaluations referred to those performed at Eastern State Hospital which is now named Oklahoma Forensic Center.

These results suggest that attorneys are using both sites equally. Oklahoma statute §1175.3(D)(2) provides that the evaluations have to be done locally before going to the Oklahoma Forensic Center.[10] The current findings suggest that attorneys might not be getting the reports they want at the local level and they are able to convince the judge for a referral to OFC. Alternatively, judges could simply be disregarding the statute requiring the outpatient evaluation first and perhaps reverting back to the prior practice of sending all competency cases to an inpatient facility.

Based on the results of this survey, overall report quality for reports performed in the local setting is currently rated between "fair" and "average" while the quality of reports performed at OFC is rated as barely "average." In fact, there has been a significant decline in the rating of overall report quality for local evaluations and a slight improvement for OFC evaluations since the previous study. Unfortunately, this has only brought the ratings for each setting closer to the middle with no considerable change for either one.

The results show that attorneys still prefer psychiatrists to perform competency evaluations but only slightly more than doctoral-level psychologists. Although this finding did not support the hypothesis, this preference has shifted since the previous study which reported "over 60% of respondents ranked psychiatrists first, whereas about one-third of the respondents ranked doctoral-level psychologists first" (p. 241). As for other qualified forensic examiners (e.g., licensed mental health professional), the low ranking that attorneys assigned to this group should be cause for concern. Notwithstanding the forensic training they must undergo and recognition by the court to

[10] "The person shall be examined by a qualified forensic examiner on an outpatient basis prior to referral for any necessary inpatient evaluation, as ordered by the court. The outpatient examination may be conducted in the community, the jail or detention facility where the person is held." O.S. § 1175.3(D)(2)

render such opinion, this professional group is underrated and perhaps underused for competency evaluations by attorneys. Perhaps, this is due to a lack of knowledge by attorneys of what training and experience these other licensed mental health professionals must undertake to become recognized by the court. A primary reason for implementing training of other licensed mental health providers was to cut down on the expense of having psychiatrists or psychologists perform the evaluations.

Attorneys have indicated in this current study that there are still perceived shortcomings in the content of competency reports which did not support the hypothesis. The majority of the defendant characteristics outlined on the survey are still only being reported "rarely" to "sometimes." Indeed, attorneys have not changed their views from the previous study about the listed characteristics as being optimal for inclusion in a report. They continue to state that factors such as defendant's "capacity to disclose pertinent facts," "quality of relating to attorney," and "thought disorders" should be included in competency reports. Unfortunately, at this time, the information included in competency reports still falls short of attorneys' expectations in order to competently represent their client. This conclusion resonates with the findings of Skeem and Golding (1998) in which they reported one of the primary problems with competency reports was "the failure to address fundamental CST abilities including the defendant's decisional competence" (p. 357).

Since the list of defendant characteristics used in the survey are the same as those listed in the Competency to Stand Trial Assessment Instrument, it is plausible to presume that this assessment tool is not being used by forensic examiners. Chances are none of the assessment tools are being used to their full potential. As Skeem and Golding (1998)

reported, only 25% of forensic examiners used competency assessment instruments. These instruments were created to assist the forensic examiner in making a quality competency assessment. Not using competency assessment instruments can lead to a poor quality evaluation which is lacking in the fundamental content of a report. An examiner who is not using the appropriate evaluation tools and addressing the essential elements of a defendant's competency is performing a disservice not only to the justice system, but to the defendant whose fate depends on the quality and thoroughness of the report.

Attorneys noted that the reports were still lacking in information they perceive as important. When given the opportunity to express their needs, many attorneys identified factors such as details of medication, psychological disorders, past drug and/or alcohol abuse and how well the defendant processes information as desired components to a competency report. Furthermore, attorneys could benefit from a clearer explanation of when the presence of a mental illness, disorder or defect deems a person incompetent. Incompetency may only be concluded if "a symptom of mental illness or other cognitive deficit directly impairs an area of competency" (ODMHSAS, p. 22). Attorneys must not misinterpret a defendant's *unwillingness* to assist counsel for an *inability* to assist counsel.

CHAPTER VI.

SUMMARY AND CONCLUSIONS

It was the purpose of this study to explore Oklahoma attorneys' perceptions of competency to stand trial evaluations. The majority of the findings have supplemented the results of the previous study by LaFortune and Nicholson, lending support that this issue deserves further attention and research.

Certain limitations must be kept in mind when interpreting these results, however. It must be noted that only a small percentage of Oklahoma attorneys were surveyed. This study did not reach beyond defense attorneys contracted with OIDS, nor did it reach beyond the borders of Oklahoma. The original study surveyed judges and attorneys in Tulsa and Oklahoma City, Oklahoma. However, due to the territorial restrictions of OIDS, this current study surveyed attorneys in all counties excluding Tulsa and Oklahoma counties. This factor creates another limitation of comparing predominantly rural attorneys to the urban attorney population queried in 1992. When conducting research using surveys, the researcher must bear in mind the bias in respondents. Those who chose to answer this survey could have been motivated by intimidation or feelings of obligation. On the other hand, a participant might have responded because he or she felt very, very strongly about this issue. In general, persons who are indifferent tend not to respond.

The conclusion, it seems, is that the changes implemented over the past 14 years to improve evaluation quality in Oklahoma have not been quite as successful as intended. It does not appear that much, if any, headway has been made in addressing the specific concerns stated by attorneys over a decade ago following changes in statutory guidelines, improvement in training and competency testing tools. The ramifications of this conclusion are far reaching. Those in the legal community, primarily defense attorneys, are not receiving quality reports necessary to represent their clients to the best of their abilities. The forensic examiners in the clinical community, other than psychiatrists and doctoral-level psychologists, are not being used often enough. The excessive costs associated with this decision are unnecessary. The evaluations produced currently in the clinical community are not highly regarded. Those in the clinical community do not appear to fully understand the current guidelines and requirements of competency evaluations. Most importantly, incompetent defendants currently being incorrectly diagnosed as competent to stand trial are being denied their right to a fair trial under the Fourteenth Amendment to the United States Constitution.

Future research should encompass a larger sample of attorneys, including prosecuting attorneys and judges, in Oklahoma, as well as other states. Additional research should be performed which seeks the opinion of forensic examiners, at both the inpatient and outpatient settings, regarding their understanding of the current statutory guidelines and their current use of assessment tools. Further research should also be conducted in which opposing evaluations from examiners for the prosecution and defense are analyzed as to their perceived quality. Of possible interest, would be a study which focuses on the importance of environment when performing an evaluation. Does the

defendant feel more comfortable in the jail setting or in the hospital setting, thus, affecting the quality of the evaluation?

It is hoped that attorneys and mental health professionals can begin to more clearly communicate their needs to one another when it comes to CST evaluations. In an effort to correct some of the foregoing deficiencies, the consumers of CST evaluations, specifically judges and prosecuting attorneys as well as defense attorneys, need to be educated. They need to be educated on the scope and limitations of forensic examiners and what should be contained in a quality report. The examiners should be further educated and trained with the possible implementation of a mentoring program and a requirement that they attend training seminars throughout the year. More importantly, a clearer definition and guidelines for determining competence must be established. Unfortunately, as research has already shown us, the same standard can be interpreted differently by different examiners. At the present time, there is a real possibility that somewhere in Oklahoma an incompetent defendant is being denied his or her 14th Amendment right to a fair trial.

REFERENCES

Borum, R. & Grisso, T. (1995). Psychological test use in criminal forensic evaluations. *Professional Psychology: Research and Practice*, *26(5)*, 465-473.

Committee on Ethical Guidelines for Forensic Psychologists. (1991). Specialty guidelines for forensic psychologists. *Law and Human Behavior*, *15*, 655-665.

Cooper v. Oklahoma, 517 U.S. 348 (1996).

Determination of Competency Act, 22 Okla. Stat. Ann. §§ 1175 (1992 & Supp. 2003).

Dillman, D.A. (1978). *Mail and Telephone Surveys: The Total Design Method.* New York: John Wiley & Sons.

Drope v. Missouri, 420 U.S. 162 (1975).

Dusky v. United States, 362 U.S. 402 (1960).

Godinez v. Moran, 509 U.S. 389 (1993).

Grisso, T. (2003). *Evaluating Competencies: Forensic Assessment and Instruments*. New York: Kluwer/Plenum.

King v. Frith, 22 How. St. Tr. 307 (1790).

LaFortune, K. & Nicholson, R. (1995). How adequate are Oklahoma's mental health evaluations for determining competency in criminal proceedings? The bench and the bar respond. *Journal of Psychiatry and Law*, *23*, 231-262.

Melton, G., Petrila, J., Slobogin, C., and Poythress, N. (1997). *Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers* (2nd ed.). New York: Guilford Press.

Missouri Institute of Mental Health (June 2003). Competency to stand trial. *MIMH Policy Brief*, School of Medicine, University of Missouri-Columbia.

Morris, G., Haroun, A. & Naimark, D. (2004). Competency to stand trial on trial. *Public Law and Legal Theory Research Paper Series*, University of San Diego School of Law.

Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) (2001). *Oklahoma Forensic Mental Health Services Manual*.

Otto, R. (2006). Competency to stand trial. [Electronic version] *Applied Psychology in Criminal Justice*, *2(3)*, 82-113.

Pate v. Robinson, 383 U.S. 375 (1966).

Roesch, R., Zapf, P, Golding, S. & Skeem, J. (1999). Defining and assessing competency to stand trial. In A. Hess & I. Weiner (Eds.), *Handbook of Forensic Psychology*, (2nd ed., pp. 327-349). London: John Wiley & Sons, Inc.

Skeem, J. & Golding, S. (1998). Community examiners' evaluations of competence to stand trial: Common problems and suggestions for improvement. *Professional Psychology: Research and Practice*, *29(4)*, 357-367.

Stafford, K. (2003). Assessment of competence to stand trial. In I. Weiner & A. Goldstein (Eds.), *Handbook of Psychology: Volume II Forensic Psychology*, (pp. 359-380). New Jersey: John Wiley & Sons, Inc.

U.S. Constitution, Amendment XIV, § 1.

Zapf, P. & Roesch, R. (Summer 2000). Mental competency evaluations: Guidelines for judges and attorneys. *Court Review*, pp. 28-35.

APPENDIX A

SURVEY OF OIDS CLIENT COMPETENCY TO STAND TRIAL

The following questions are designed to assess the gamut of opinions of OIDS noncapital trial attorneys who are affected by or effect in some way the decision to refer a client for an evaluation of competency to stand trial. Although evaluations are typically performed by mental health professionals, the survey questions ask for your perception of "competency" as an attorney as well as your level of "consumer satisfaction" with the competency evaluations you may have requested in the past. Each question is designed to assess your opinion about a particular evaluation issue. Some of the questions ask you to respond about the issue by giving a rating on a five-point scale of 1 to 5. Other questions are open-ended and ask you for a written response.

1. Please estimate the number of your OIDS clients who have been evaluated by a mental health professional during the last two (2) years due to a question of the client's competency to stand trial: _____.

2. Please identify the mental health professional(s) who have provided competency evaluations within the last two (2) years of your OIDS clients, including any agency such professionals may be affiliated with:

_____
_____
_____
_____
_____
_____
_____

3. Where are your evaluations for competency to stand trial performed? (Circle a number.).

1. LOCALLY
2. AT THE OKLAHOMA FORENSIC CENTER
3. BOTH LOCALLY AND AT THE OKLAHOMA FORENSIC CENTER
4. DON'T KNOW

4. Where would you like to have your competency to stand trial evaluations performed? (Circle a number.)

1. LOCALLY
2. AT THE OKLAHOMA FORENSIC CENTER
3. NO PREFERENCE EITHER WAY

Please rank the following statements separately for evaluations received locally and at the Oklahoma Forensic Center. (Circle number for each category.)

5. The reports for competency to stand trial are submitted in a timely manner.

LOCALLY	OKLAHOMA FORENSIC CENTER
1. STRONGLY DISAGREE	1. STRONGLY DISAGREE
2. SOMEWHAT DISAGREE	2. SOMEWHAT DISAGREE
3. UNDECIDED	3. UNDECIDED
4. SOMEWHAT AGREE	4. SOMEWHAT AGREE
5. STRONGLY AGREE	5. STRONGLY AGREE

6. The mental health evaluators there seem to be familiar with the appropriate legal criteria and issues. (Circle number for each category.)

LOCALLY	OKLAHOMA FORENSIC CENTER
1. STRONGLY DISAGREE	1. STRONGLY DISAGREE
2. SOMEWHAT DISAGREE	2. SOMEWHAT DISAGREE
3. UNDECIDED	3. UNDECIDED
4. SOMEWHAT AGREE	4. SOMEWHAT AGREE
5. STRONGLY AGREE	5. STRONGLY AGREE

7. Generally, the reports received for competency to stand trial evaluations have been understandable (clear language) rather than confusing (mental health jargon). (Circle number for each category.)

LOCALLY	OKLAHOMA FORENSIC CENTER
1. STRONGLY DISAGREE	1. STRONGLY DISAGREE
2. SOMEWHAT DISAGREE	2. SOMEWHAT DISAGREE
3. UNDECIDED	3. UNDECIDED
4. SOMEWHAT AGREE	4. SOMEWHAT AGREE
5. STRONGLY AGREE	5. STRONGLY AGREE

8. Generally, the reports received for competency to stand trial evaluations explain the factual basis of the clinician's conclusions about the defendant's capacity to appreciate the nature of the charge and to assist in his or her defense. (Circle number for each category).

LOCALLY	OKLAHOMA FORENSIC CENTER
1. STRONGLY DISAGREE	1. STRONGLY DISAGREE
2. SOMEWHAT DISAGREE	2. SOMEWHAT DISAGREE
3. UNDECIDED	3. UNDECIDED
4. SOMEWHAT AGREE	4. SOMEWHAT AGREE
5. STRONGLY AGREE	5. STRONGLY AGREE

9. The information contained within the reports received for competency to stand trial evaluations have been useful in assisting in the decision-making process for determinations of competency in the courts. (Circle number for each category).

LOCALLY	OKLAHOMA FORENSIC CENTER
1. STRONGLY DISAGREE	1. STRONGLY DISAGREE
2. SOMEWHAT DISAGREE	2. SOMEWHAT DISAGREE

3. UNDECIDED	3. UNDECIDED
4. SOMEWHAT AGREE	4. SOMEWHAT AGREE
5. STRONGLY AGREE	5. STRONGLY AGREE

10. Please rank the overall quality of the competency reports you have received in the past.

LOCALLY	OKLAHOMA FORENSIC CENTER
1. VERY POOR	1. VERY POOR
2. FAIR	2. FAIR
3. AVERAGE	3. AVERAGE
4. GOOD	4. GOOD
5. EXCELLENT	5. EXCELLENT

11. Has the quality of the competency evaluations improved, declined or remained the same over the previous three (3) years?

LOCALLY	OKLAHOMA FORENSIC CENTER
1. IMPROVED	1. IMPROVED
2. DECLINED	2. DECLINED
3. REMAINED THE SAME	3. REMAINED THE SAME

12. Assuming that the professionals performing the evaluations are equally skilled, from whom would you prefer to receive your reports? (Circle a number.)

1. LOCALLY
2. AT THE OKLAHOMA FORENSIC CENTER
3. NO PREFERENCE

13. Please rank the following professionals as to your preference for their competency evaluations of your clients. (1 indicates first choice, 2indicates second choice, and so on).

_____PSYCHOLOGIST (masters level)
_____PHYSICIAN (non-psychiatrist)
_____SOCIAL WORKER (masters level)
_____PSYCHOLOGIST (PhD.)
_____PSYCHIATRIST (M.D. - D.O.)
_____OTHER LICENSED MENTAL HEALTH PROFESSIONAL AS PROVIDED BY OKLAHOMA STATUTES

14. Please rank the following professionals as to how valid you consider their competency evaluations. (1 indicates always valid, 2 indicates usually valid, 3 neutral/undecided, 4 usually invalid, 5 always invalid).

_____PSYCHOLOGIST (masters level)
_____PHYSICIAN (non-psychiatrist)
_____SOCIAL WORKER (masters level)
_____PSYCHOLOGIST (PhD.)
_____PSYCHIATRIST (M.D. - D.O.)
_____OTHER LICENSED MENTAL HEALTH PROFESSIONAL AS PROVIDED BY OKLAHOMA STATUTES

15. In your experience, to what extent do competency reports generally take into account or reflect the following criteria in the body of the report? (A=ALWAYS, O=OFTEN, S=SOMETIMES, R= RARELY, N=NEVER. Circle the one of the five that applies for each category).

a. DEFENDANT'S APPRECIATION OF THE CHARGE
A O S R N

b. DEFENDANT'S UNDERSTANDING OF ATTORNEY-CLIENT PRIVILEGE
A O S R N

c. DEFENDANT'S QUALITY OF RELATING TO ATTORNEY
A O S R N

d. DEFENDANT'S UNDERSTANDING OF COURT ROOM PROCEDURE
A O S R N

e. DEFENDANT'S CAPACITY TO DISCLOSE PERTINENT FACTS
A O S R N

f. DEFENDANT'S PLANNING OF LEGAL STRATEGY
A O S R N

g. DEFENDANT'S UNDERSTANDING PLEA BARGAINING PROCESSES
A O S R N

h. DEFENDANT'S CAPACITY TO TESTIFY RELEVANTLY
A O S R N

i. DEFENDANT'S SELF DEFEATING MOTIVATION
A O S R N

j. DEFENDANT'S UNMANAGEABLE BEHAVIOR
A O S R N

k. DEFENDANT'S MEMORY
A O S R N

l. DEFENDANT'S CONCENTRATION
A O S R N

m. DEFENDANT'S THOUGHT DISORDERS
A O S R N

n. DEFENDANT'S APPRAISAL OF KEY FIGURES IN COURT
A O S R N

16. In your experience, to what extent should competency reports take into account or reflect the following criteria in the body of the report? (A=ALWAYS, O=OFTEN, S=SOMETIMES,

R=RARELY, N=NEVER Circle the one of the five that applies for each category).

a. DEFENDANT'S APPRECIATION OF THE CHARGE
A O S R N

b. DEFENDANT'S UNDERSTANDING OF ATTORNEY-CLIENT PRIVILEGE
A O S R N

c. DEFENDANT'S QUALITY OF RELATING TO ATTORNEY
A O S R N

d. DEFENDANT'S UNDERSTANDING OF COURT ROOM PROCEDURE
A O S R N

e. DEFENDANT'S CAPACITY TO DISCLOSE PERTINENT FACTS
A O S R N

f. DEFENDANT'S PLANNING OF LEGAL STRATEGY
A O S R N

g. DEFENDANT'S UNDERSTANDING PLEA BARGAINING PROCESSES
A O S R N

h. DEFENDANT'S CAPACITY TO TESTIFY RELEVANTLY
A O S R N

i. DEFENDANT'S SELF DEFEATING MOTIVATION
A O S R N

j. DEFENDANT'S UNMANAGEABLE BEHAVIOR
A O S R N

k. DEFENDANT'S MEMORY
A O S R N

l. DEFENDANT'S CONCENTRATION
A O S R N

m. DEFENDANT'S THOUGHT DISORDERS
A O S R N

n. DEFENDANT'S APPRAISAL OF KEY FIGURES IN COURT
A O S R N

17. What other elements do you believe should specifically be addressed in the body of a report of an evaluation of competency to stand trial? Please list below.

_____

_____

18. Any further comments you have regarding competency evaluations (feel free to provide attachments):

APPENDIX B

(Form of Cover Letter)

Please take a few moments to fill out, and ask your attorneys who have not already done so to fill out the attached "Survey of OIDS Client Competency to Stand Trial." Kathy LaFortune is collecting this information to help her identify mental health professionals who are performing substandard competency evaluations. We have already distributed this survey to all OIDS non-cap trial staff and contract lawyers.

I would like these returned no later than Wednesday, November 1. Completed surveys from CTN can be sent directly to me. CTT attorneys can give them to Kathy. If you have any questions, please feel free to contact Kathy or me.

Craig Sutter
Deputy Executive Director of OIDS

JAMES D. BEDNAR
EXECUTIVE DIRECTOR

BRAD HENRY
GOVERNOR

STATE OF OKLAHOMA
OKLAHOMA INDIGENT DEFENSE SYSTEM

JAMES DRUMMOND
CHIEF, NON-CAPITAL TRIAL DIVISION

E-mail: jimd@oids.state.ok.us
US Mail: P.O. Box 926, Norman, OK 73070

TO: All OIDS Staff and Contract Attorneys

RE: Attached Survey of Attorneys Regarding Issues of Client Competency to Stand Trial

DATE: October 2, 2006

Attached is an important survey relating to competency to stand trial. OIDS is determined to assess and consider action to procure improvement in the procedures and resources pertaining to competency.

Therefore it is very important for you to work with us in completing and returning the attached survey as soon as possible. This is not theoretical; actual cases are being affected and may see their developments and outcomes influenced by the information you provide.

Please return the completed survey promptly to this office. Thank you for your assistance and for your continued commitment to indigent defense.

Sincerely,

Jim Drummond
NCT Division Chief

H:\WPDATA\Competency Survey 2006\Cover letter for survey.wpd

NON-CAPITAL TRIAL DIVISION • 1070 GRIFFIN DRIVE • NORMAN, OK 73071 • (405) 801-2655 • FAX (405) 801-2661

APPENDIX C

Oklahoma State University
Center for Health Sciences
College of Osteopathic Medicine
Institutional Review Board

Memo

To: Angila Graham
Forensic Sciences Student

From: Michael Pollak, PhD
Acting Chairman in the Absence of Steve Eddy, DO, Chairman, Institutional Review Board

Date: April 25, 2007

Re: **Protocol – IRB # 2007011**

EXEMPT APPROVAL

Title: **Defense Attorney's Perceptions of Competency to Stand Trial Evaluations in Oklahoma: A Second Look**

Under the authority of Title 45 CFR 46.101(b) and the OSU-CHS Institutional Review Board (IRB), an exempt review was performed on:

Protocol # 2007011

for Protocol – IRB # 2007011. It was determined the information submitted meets exempted criteria under federal guidelines.

Please advise us when this study is closed so we may close our file.

If you have questions please contact Teri Bycroft, Assistant Director of Research Integrity at teri.bycroft@okstate.edu or (918) 586-4609.

APPENDIX D

Table 1

Location where competency to stand trial evaluations are currently performed

Setting	%
Locally	28.89%
At the Oklahoma Forensic Center	17.78%
Both Locally and at the Oklahoma Forensic Center	53.33%
Don't know	0.00%

Table 2

Preferred location where competency to stand trial evaluations are performed

Setting	Current	1995
Locally	24.44%	66.40%
At the Oklahoma Forensic Center	35.56%	9.30%
No preference either way	40.00%	24.30%

Table 3

Preferred location where competency to stand trial evaluations are performed (assuming the professionals performing evaluations are equally skilled)

Setting	%
Locally	36.36%
At the Oklahoma Forensic Center	29.55%
No preference either way	34.09%

Table 4

Attorneys' ratings of characteristics of reports submitted by mental health professionals from different settings

	Setting							
	Local				OFC			
	1995		Current		1995		Current	
Report Characteristic	***M***	***SD***	***M***	***SD***	***M***	***SD***	***M***	***SD***
Reports are timely	4.01	0.96	3.77	1.00	3.53	1.07	3.94**	0.89
Examiners are familiar with legal criteria and issues	4.11	0.99	3.40*	1.34	3.61	1.19	3.75	1.20
Examiners use understandable language	4.00	0.93	3.81	1.19	3.53	1.10	3.86**	0.96
Examiners give factual basis for conclusions	3.78	1.16	3.24*	1.36	2.85	1.29	3.22	1.27
Reports are useful in decision-making	3.94	1.05	3.24*	1.18	3.17	1.27	3.22	1.22
Overall Quality	3.85	1.01	2.95*	1.07	2.88	1.13	3.21	1.22

Note: Ratings were made on a Likert scale. For the first five items, 1 = Strongly disagree, 5 = Strongly agree. For Overall Quality rating, 1 = Poor, 5 = Excellent

Using student t-tests ($p < 0.05$):

* Local: Current value is significantly different from 1995 value

** OFC: Current value is significantly different from 1995 value

Table 5

Attorneys' perception of quality of competency evaluations*

Quality	Local	OFC
Improved	5.56%	7.41%
Declined	11.11%	25.93%
Remained the Same	83.33%	66.67%

*NOTE: For the period consisting of the past three (3) years from date of survey completion.

Table 6

Attorneys' preferences for competency to stand trial evaluations conducted by members of different mental health professions

							1995		Current	
Professional Group	**First**	**Second**	**Third**	**Fourth**	**Fifth**	**Sixth**	**Mean**	***SD***	**Mean**	***SD***
Psychiatrist (M.D. – D.O.)	54.76%	28.57%	16.67%	0%	0%	0%	1.92	0.79	1.62	0.76
Psychologist (Ph.D.)	43.18%	45.45%	9.09%	0%	2.27%	0%	1.99	0.69	1.73	0.82
Psychologists (masters level)	7.32%	19.51%	65.85%	7.32%	0%	0%	2.52	0.82	2.73	0.71
Physician (non-psychiatrist)	0%	2.50%	7.50%	37.50%	20.00%	32.50%	3.07	0.96	4.73	1.09
Social Worker	0%	0%	0%	30.00%	47.50%	22.50%	3.45	0.93	4.93	0.73
Other Licensed Mental Health Professional as Provided by Oklahoma Statutes	0%	0%	0%	25.00%	32.50%	42.50%	N/A	N/A	5.18	0.81

Note: Professional groups were ranked from first to sixth as to attorneys' preferences for evaluations conducted by members of that group

Table 7

Ratings of actual frequency for describing selected defendant characteristics in competency reports

Defendant Characteristic	Always	Often	Sometimes	Rarely	Never	1995 Mean	Current Mean
Appreciation of Charges*	53.49%	30.23%	13.95%	2.33%	0%	4.25	4.35
Appraisal of Key Figures in Court	23.26%	51.16%	9.30%	11.63%	4.65%	2.94	3.77
Understanding of Court Room Procedure	27.91%	30.23%	30.23%	11.63%	0%	3.29	3.74
Quality of Relating to Attorney	16.28%	18.60%	25.58%	25.58%	13.95%	3.12	2.98
Understanding of Attorney-Client Privilege	11.63%	18.60%	27.91%	20.93%	20.93%	2.74	2.79
Understanding Plea Bargaining Processes	2.33%	13.95%	44.19%	27.91%	11.63%	2.46	2.67
Planning of Legal Strategy	6.98%	4.65%	27.91%	30.23%	30.23%	2.31	2.28
Self Defeating Motivation	2.33%	6.98%	18.60%	32.56%	39.53%	2.05	2.00
Capacity to Disclose Pertinent Facts	18.60%	23.26%	37.21%	13.95%	6.98%	3.35	3.33
Capacity to Testify Relevantly	9.30%	4.65%	25.58%	30.23%	30.23%	2.79	2.33
Unmanageable Behavior	4.65%	9.30%	20.93%	46.51%	18.60%	2.80	2.35
Concentration	6.98%	9.30%	37.21%	37.21%	9.30%	2.73	2.67
Memory	9.30%	16.28%	39.53%	27.91%	6.98%	3.01	2.93
Thought Disorders	9.30%	16.28%	53.49%	20.93%	0%	3.37	3.14

Note: Ratings were made on a Likert scale: 1 = Never, 3 = Sometimes, 5 = Always

*NOTE: Refers to the criminal offense(s) with which defendant is charged.

Table 8

Ratings of optimal frequency for describing selected defendant characteristics in competency reports

Defendant Characteristic	Always	Often	Sometimes	Rarely	Never	1995 Mean	Current Mean
Appreciation of Charges*	95.45%	2.27%	2.27%	0%	0%	4.96	4.93
Appraisal of Key Figures in Court	56.82%	31.82%	9.09%	2.27%	0%	3.89	4.43
Understanding of Court Room Procedure	68.18%	20.45%	11.36%	0%	0%	4.07	4.57
Quality of Relating to Attorney	77.27%	11.36%	6.82%	2.27%	2.27%	4.25	4.59
Understanding of Attorney-Client Privilege	70.45%	18.18%	9.09%	0%	2.27%	4.05	4.55
Understanding Plea Bargaining Processes	63.64%	20.45%	11.36%	2.27%	2.27%	3.90	4.41
Planning of Legal Strategy	54.55%	15.91%	27.27%	0%	2.27%	3.31	4.20
Self Defeating Motivation	58.14%	23.26%	16.28%	0%	2.33%	3.71	4.35
Capacity to Disclose Pertinent Facts	81.82%	15.91%	0%	0%	2.27%	4.65	4.75
Capacity to Testify Relevantly	79.55%	6.82%	11.36%	0%	2.27%	4.36	4.61
Unmanageable Behavior	67.44%	18.60%	13.95%	0%	0%	4.28	4.53
Concentration	75.00%	15.91%	6.82%	2.27%	0%	4.15	4.64
Memory	86.05%	4.65%	6.98%	2.33%	0%	4.40	4.74
Thought Disorders	90.91%	4.55%	4.55%	0%	0%	4.48	4.86

Note: Ratings were made on a Likert scale: 1 = Never, 3 = Sometimes, 5 = Always

*NOTE: Refers to the criminal offense(s) with which defendant is charged.

Table 9

Other elements which should be specifically addressed in the body of a competency report	
1	Some examiners seem to find malingering whenever the symptoms of mental illness are presented. I think competency examiners should review a client's history of mental illness (prior to charges) in assessing malingering, rather than testing alone. It has been a convenient method of ignoring powerful presentations of mental illness, even when they pre-date the crime more than a decade, without consideration of other relevant factors. I had a client once who was severely mentally ill or hostile witnesses reported extremely paranoid and delusional behavior for years prior to the alleged crime and had some documentation of it although he was not treated. Dr. X, relying on testing alone, found the client not only competent, but not mentally ill at all, finding malingering. He did not interview the witnesses hostile to the client who were aware of extremely bizarre behavior for years and indicated that their observations would not affect his opinion.
2	How well the individual processes information. Education level should be given more weight. Social background must be considered especially with Micronesians and others with different societies.
3	Amount of time actually used to observe and evaluate client. The extent the current mental health professional depends or relys (sic) upon previous client evaluations and reports to form an opinion. Whether more than one mental health/competency evaluation has been requested or ordered by the trial court in the same proceeding. Note changes, new symptoms, new or different allegations to application, and effect of any medications previously ordered.
4	Defendants understanding of range of punishment.
5	In cases where competency restoration has occurred, disclosure of methods, techniques, medication adjustments, etc. to restore to competency. Estimation of time client will be "competent" after discharge from treatment, especially if "medicated to competency"; potential effects of medication withdrawal, etc.
6	I would like to know the process they used to change a client from incompetent to competent.

7	Competency seems to be a very difficult, complicated matter to determine – something that requires both subjective and objective analyses. It has been my experience that the master's degree level evaluations lack either education or training (or both) to make such an important pronouncement. Generally, defendants are not sent for competency evaluations unless there is a strong suspicion of incompetency. Evidence to the contrary (that defendant is competent) needs to be specific, grounded and as correct as possible. It's just too important an issue to review in a perfunctory manner.
8	I cannot think of anything to add to above list.
9	Details of current and past medication. Details of substance abuse history.
10	The specific mental disorder of the defendant should be listed and explained, if applicable and known.
11	Everything seems to be working out ok.
12	Can they relay facts to their attorney and discuss them competently.
13	I believe the reports should include clarification of mental health issues as set forth in 43A§1-103 and have those issues relate to competency. Most of the time, some mental health issues are identified but not pursued. For example, it may be determined that a person is able to appreciate the nature of the charges against them yet they hear voice and are delusional or paranoid.
14	Past history, records of school, treatment, etc.
15	Any drug or alcohol abuse and family history.
16	Defendant's mental retardation. Defendant's psychological disorders.
17	All mental health issues. IQ determination.
18	Past mental health history.
19	If statements/conclusions are made that a defendant is malingering the evaluator should support that conclusion with facts.
20	Specifically what procedures were used and what documents examined in order to reach opinion.
21	The above list (a) is a pretty good start as far as an attorney for one whose competency is in question.

22	I think more emphasis should be given on the client's ability to assist counsel.
23	Motivation for having given a confession/inculpatory (sic) statement to law enforcement. Effects of medication/non-medication. Whether client can meaningfully assist in planning defense strategies with counsel. Any and all documents provided by defense counsel. Defense counsel's opinions on client's abilities to participate meaningfully in defense.

Table 10

Further comments regarding competency evaluations	
1	Dr. X is also the examiner mentioned in question #11. It is basically the feeling in our practice amongst the attorneys with whom I work, that if Dr. X examines your client, the outcome is predetermined. He is generally perceived as biased with an agenda to keep clients out of the Forensic Center. He has substantial influence over other examiners – or so it seems.
2	I have had only 1 competency evaluation done; however, I have read reports done from the Oklahoma Forensic Center. They are more detailed and better than the local provide.
3	Simply answering a question "yes" or "no" should or finish the evaluation. Much more detail should be placed into the evaluations so the court systems can appreciate the level of competency.
4	We have not had very good reports from local mental health professionals.
5	As to Question #16, I want many of items to be evaluated, such as memory, self-defeating motivation, unmanageable, etc., however, I don't want it discussed in relation to the torts of the case.
6	It is problematic to me when an evaluator indicates a defendant "hears voices from God" and his actions are motivated by such voices, but that he is competent. Competency often seems to be a subjective determination made by evaluator. If true, that can be manipulated by a defendant giving an incorrect evaluation. While there is certainly a difference between incompetency and insanity often the basis for one diagnosis (evaluation) is present in the other diagnosis. If the defendant has been evaluated, and found to be competent, but defense attorney has serious doubt about the defendant's ability to fully understand proceedings or to aid in his own defense, the recourse has often been to request a second evaluation by the Oklahoma Forensic Center. Why, then, are <u>any</u> evaluations performed elsewhere?
7	I have no experience with local evaluations.
8	Mental health professions should focus on stating competency issues and not assisting the state in obtaining conviction (OFC).

9	Nothing regarding evaluation process, but I do not like the competency laws. The threshold for competency is so low that very few people with serious mental health issues are actually found to be incompetent.
10	The concern I have is that most reports usually only focus on if they understand the nature of the charge. Whether they can assist in their defense is almost always left out. There is never any consultation with the attorney regarding this issue by the evaluator.
11	My recent client complained that OFC staff was abusive during questioning for the competency evaluation. According to defendant, staff raised voices, and otherwise intimidated her. Defendant was impressed with the difference with the local, private doctor appointed to evaluate her.
12	The evaluations received from OIDS appointed experts have been excellent and I could not suggest any improvements. The above answers apply to evaluations by local mental health personnel and those employed by the OFC. Ms. A is doing an outstanding job in assisting contracting attorneys with experts in this field.
13	We have had one or two cases of borderline mental retardation with the reports reading conclusion that defendant could stand trial. The problem is discussing the case with a client that does not comprehend 100% of the time.
14	I have only had experience with Mr. C. In each case, his evaluation has been decisive in obtaining appropriate treatment and mitigation of punishment.
15	Our experience X Mental Health Center is that a relatively inexperienced worker stamps competency. Last time a retardation issues arose, this was not evaluated because their forms had not bee updated, despite our request. At Eastern State, one of the psychologists apparently believes everyone is malingering and takes steps to prove this rather than treat. No experience with OFC (researcher's note: Eastern State is OFC). Best results have come from private psychologists obtained through OIDS or through OIDS staff.
16	Competency and mental health should be lumped together in the determination of actual competency. Oftentimes you can find people who may be "competent" to stand trial but due to mental health issues, may not be responsible for their actions. A more comprehensive test is needed in order to determine the difference in these issues. An IQ test needs to be administered with every competency evaluation at the local level and the Forensic Center.

17	Competency evaluation in Oklahoma is a joke because OFC is so biased toward the prosecution and the doctor's goal is to find a way defendant competent and malingering. The newest trend is to find the defendant competent and malingering even though the defendant is prescribed medications. After treatment at OFC, defendants are sent back with 2 weeks medication and after 2 weeks the medication is stopped because the jails will not prescribe because of cost. This puts the defendant at great health risk as well as renders them incompetent again.
18	Have had good results from OFC. Our locals are excellent screeners and are good for me because I can call them or _____ face to face if necessary. My slightly lower rating is due to turn over and some inconsistent reports.
19	OFC evaluations have become a farce, for the most part, in my opinion. Evaluators there seem inclined toward assisting prosecution, rather than producing an accurate competency assessment. The local evaluations seem to be much more detached from the DA's office. Even though we often provide OFC with records helpful in the evaluations, that material is almost never addressed in the report. If addressed at all, the documentation we provide is normally summarily dismissed by the evaluator. OFC also seems to give no weight at all to counsel's observations and opinions regarding the attorney/client relationship.
20	If evaluations are done at OFC = always invalid. Validity is not related to education level but rather <u>bias</u> for example at EFC all clients "malinger" (note to #14)
21	But really <u>neither</u>, need more qualified or unbiased <u>doctors</u> (not counselors) (Note to #12)
22	But manipulate (note to #6 OFC).
23	It depends on the examiner. I have seen one examiner claim that a client was competent as long as he agreed with his attorney's advice, otherwise not competent. That's what the report said. (Note at #11 OFC)
24	Because the criterion used in the assessment is wrong, the courts almost complete reliance on the reports has been problematic (note at #9 OFC).
25	Turn around is very fast once the client is transported, but it takes a long time to get them in to be examined (note at #5 OFC).
26	Lately it has taken longer for client to be taken to OFC after doubt as to competency found by court (note at #5 OFC).
27	They usually seem pretty biased (note at #9).

28	Opinion sometimes seems inconsistent with body of report (note at #7).
29	Absolutely not (note at #4 locally).
30	Usually it is the private practitioner or OIDS staff input which is most helpful (note at #9 locally).
31	Last 2 times they were not aware of new statutory materials affecting retardation evaluation (note at #6 locally).
32	Sometimes too quickly to be thorough (note at #5 locally).

Figure 1

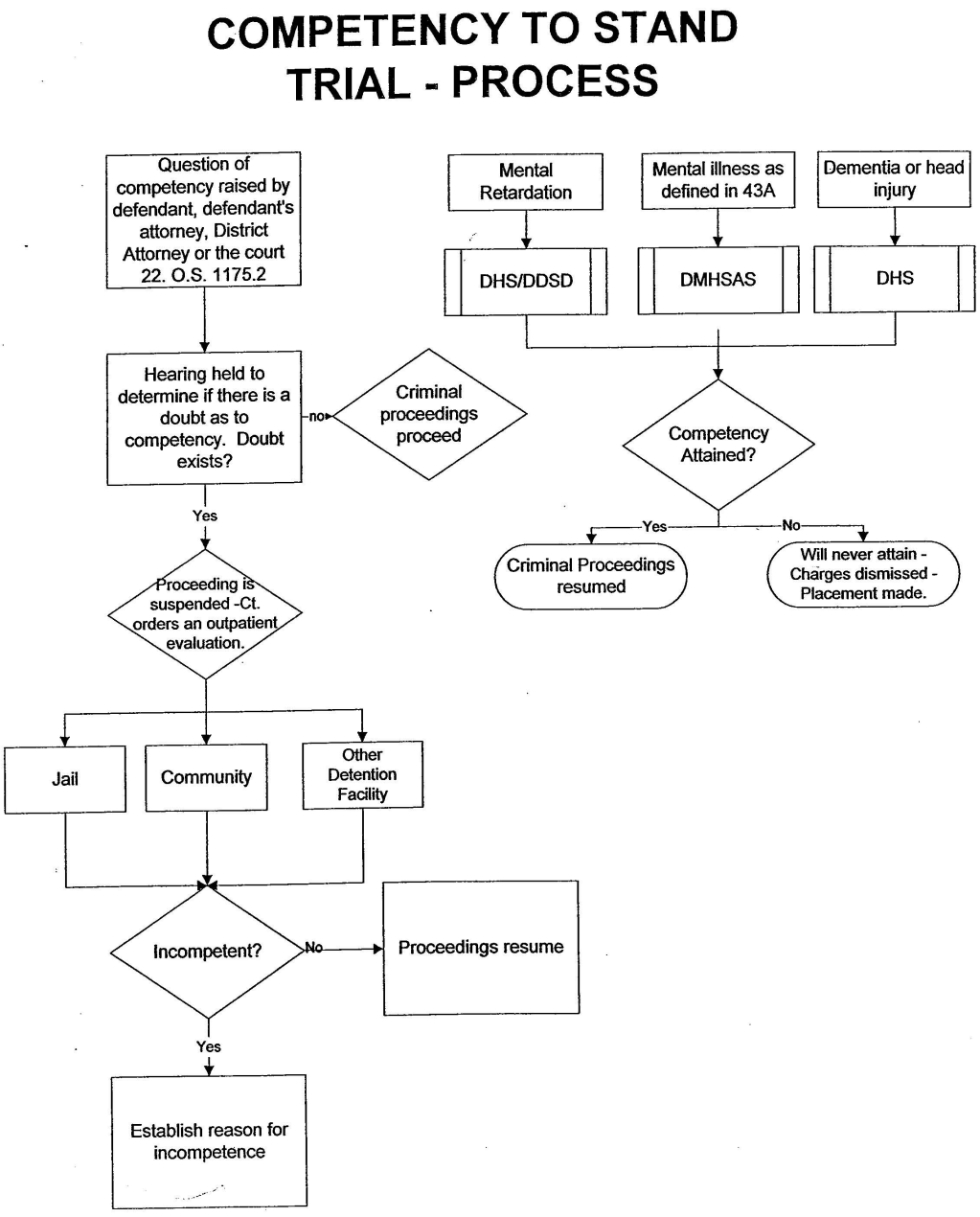
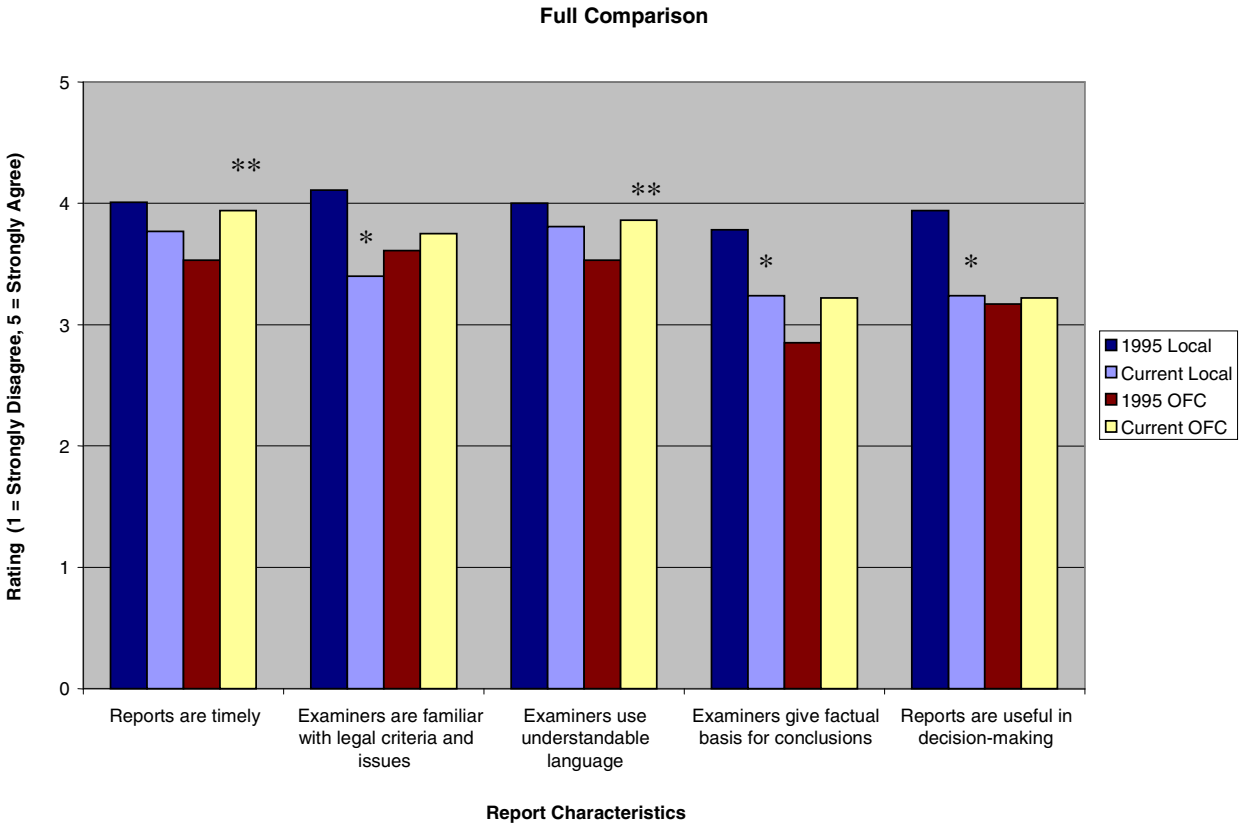

COMPETENCY TO STAND TRIAL - PROCESS
Question of competency raised by defendant, defendant's attorney, District Attorney or the court 22. O.S. 1175.2
Hearing held to determine if there is a doubt as to competency. Doubt exists?
no
Criminal proceedings proceed
Yes
Proceeding is suspended -Ct. orders an outpatient evaluation.
Jail
Community
Other Detention Facility
Incompetent?
No
Proceedings resume
Yes
Establish reason for incompetence
Mental Retardation
Mental illness as defined in 43A
Dementia or head injury
DHS/DDSD
DMHSAS
DHS
Competency Attained?
Yes
No
Criminal Proceedings resumed
Will never attain - Charges dismissed - Placement made.

Figure 2

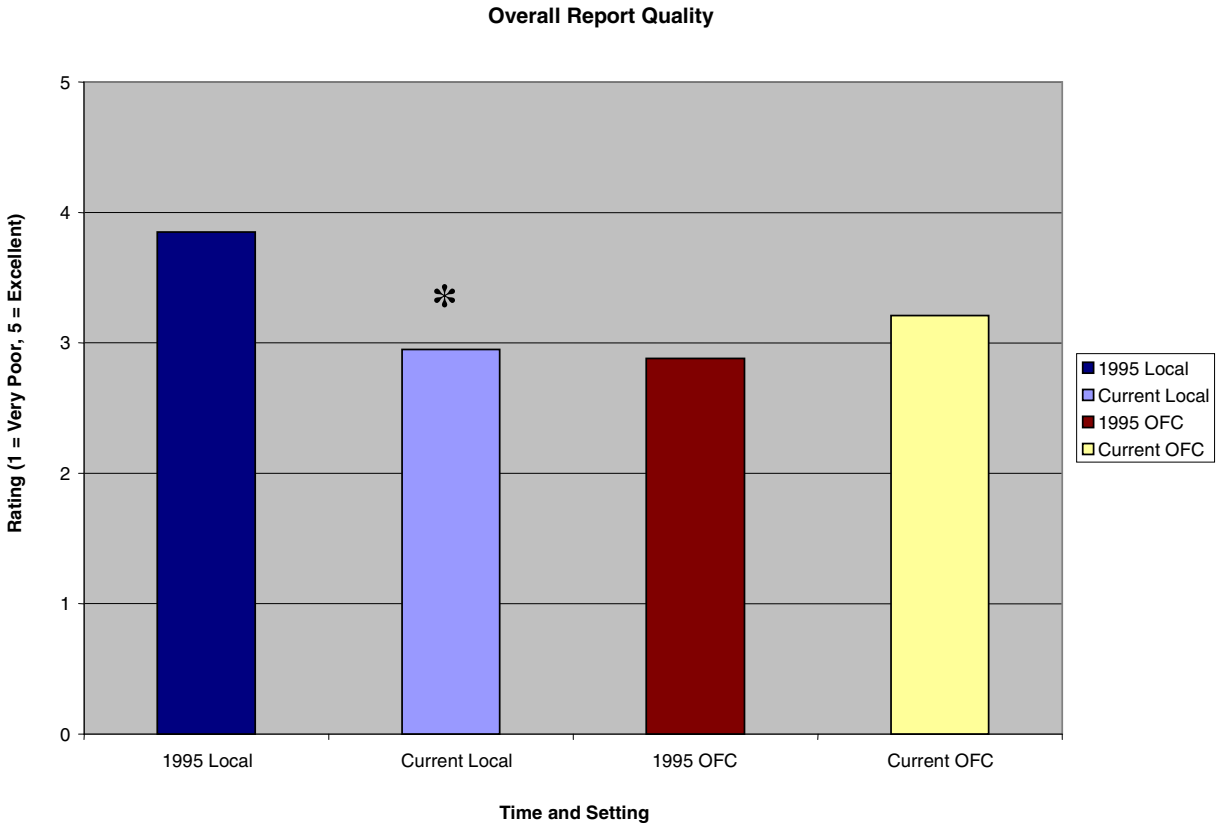


Using student t-tests ($p < 0.05$):

* Local: Current value is significantly different from 1995 value

** OFC: Current value is significantly different from 1995 value

Figure 3



Using student t-tests ($p < 0.05$):
*Current Local: Significantly different from 1995 Local value
No difference between OFC values.

Figure 4

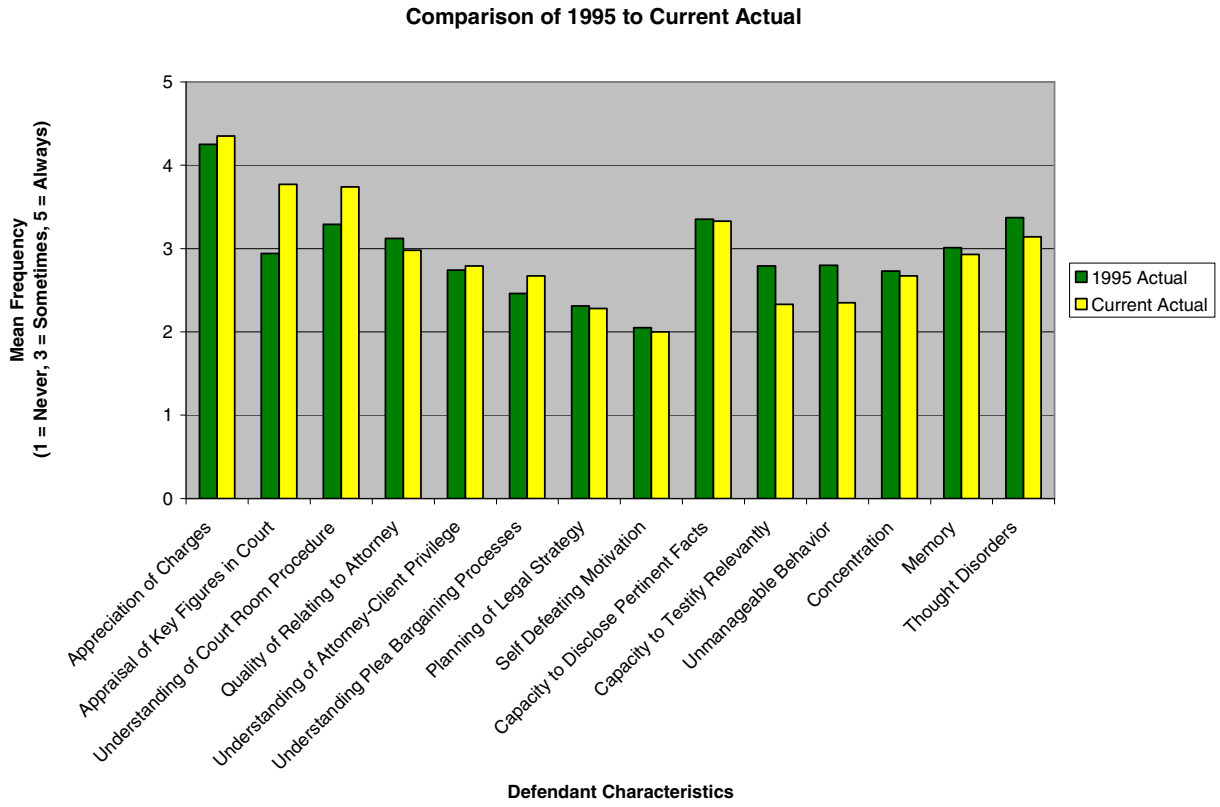
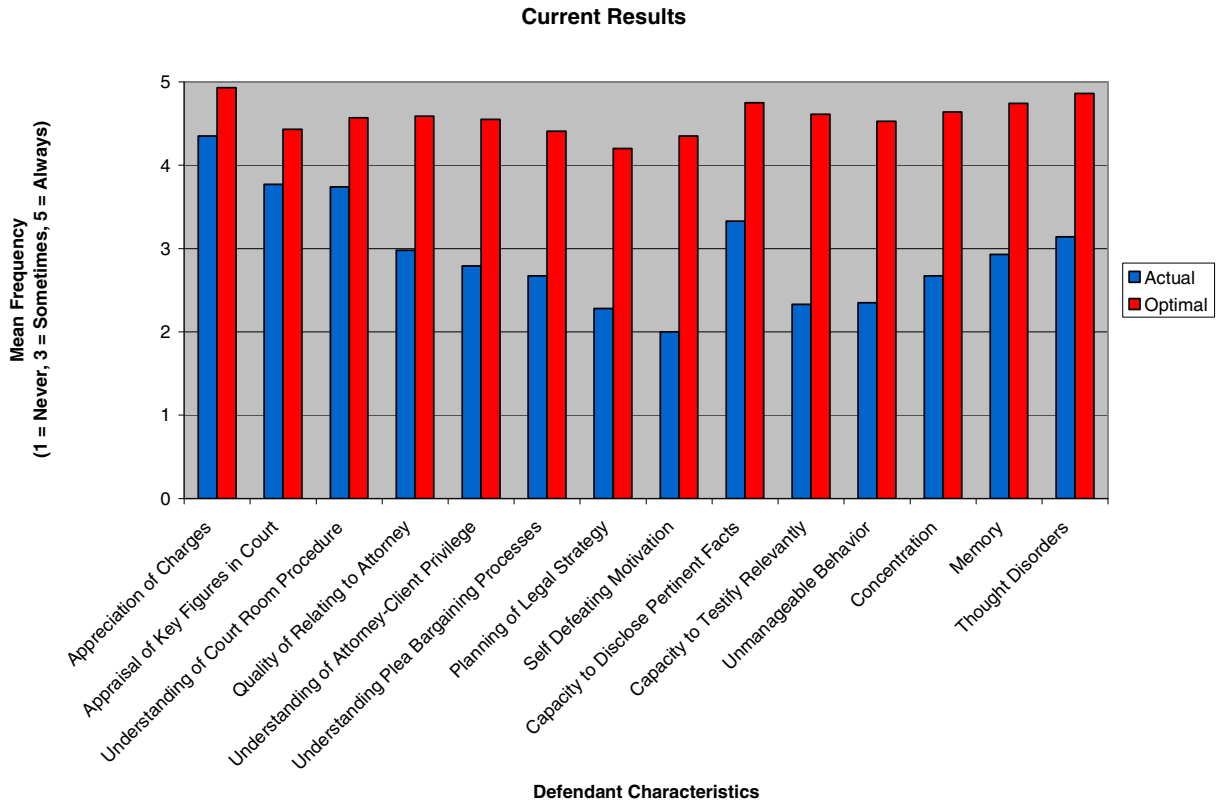
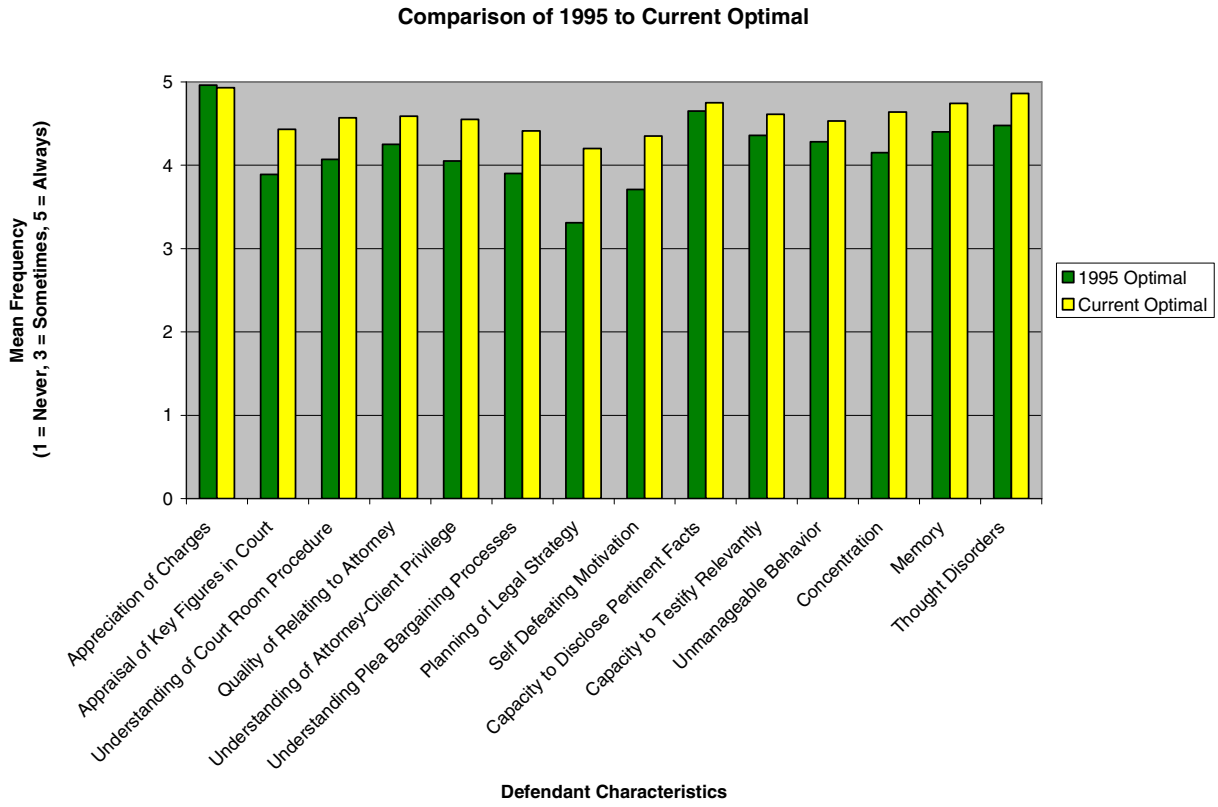

Comparison of 1995 to Current Actual
Mean Frequency
(1 = Never, 3 = Sometimes, 5 = Always)
0
1
2
3
4
5
1995 Actual
Current Actual
Appreciation of Charges
Appraisal of Key Figures in Court
Understanding of Court Room Procedure
Quality of Relating to Attorney
Understanding of Attorney-Client Privilege
Understanding Plea Bargaining Processes
Planning of Legal Strategy
Self Defeating Motivation
Capacity to Disclose Pertinent Facts
Capacity to Testify Relevantly
Unmanageable Behavior
Concentration
Memory
Thought Disorders
Defendant Characteristics

Figure 5



Optimal frequencies were significantly ($p < 0.0001$) higher than actual frequencies in all categories.

Figure 6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VITA

Angila Christina Graham

Candidate for the Degree of

Master of Science

Thesis: DEFENSE ATTORNEYS' PERCEPTIONS OF COMPETENCY TO STAND TRIAL EVALUATIONS IN OKLAHOMA: A SECOND LOOK

Major Field: Forensic Sciences

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Personal Data:	Born in Fayetteville, Arkansas on March 6, 1971, the daughter of Roger and Linda Graham
Education:	Graduated from Fayetteville High School in Fayetteville, Arkansas in May, 1989; received Bachelor of Arts degree in Psychology from University of Arkansas, Fayetteville, Arkansas, in August, 1996. Completed the requirements for the Master of Science degree at Oklahoma State University Center for Health Sciences with a major in Forensic Psychology in July, 2007.
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Name: Angila Christina Graham Date of Degree: July, 2007

Institution: Oklahoma State University Location: Tulsa, Oklahoma

Title of Study: DEFENSE ATTORNEYS' PERCEPTIONS OF COMPETENCY TO STAND TRIAL EVALUATIONS IN OKLAHOMA: A SECOND LOOK

Pages in Study: 76 Candidate for the Degree of Master of Science

Major Field: Forensic Sciences

Scope and Method of Study: The purpose of this study was to examine Oklahoma defense attorneys' perceptions of competency to stand trial evaluations. Participants in this study were 47 attorneys who are contracted with the Oklahoma Indigent Defense System ("OIDS"). Each participant completed a survey which was delivered to them via electronic mail by OIDS personnel, independent of this study. Descriptive statistics (including percentages, means and standard deviations) as well as paired t-tests, were used to test the hypotheses.

Findings and Conclusions: Unlike the original study done by LaFortune and Nicholson (1995), there was no strong preference for setting (local vs. Oklahoma Forensic Center) to perform competency to stand trial evaluations. Attorneys' opinions were that the quality of the evaluations has remained the same for the past three years in both the local and OFC settings. Attorneys continue to perceive report characteristics as lacking vital information necessary to adequately defend their clients.

Advisor's Approval: Dr. Kathryn A. LaFortune