Testamentary Competence: Defining Functional Abilities

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Dedication

To my husband, Todd

I couldn't have done this without all your love and support

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Abstract

Testamentary Competence: Defining Functional Abilities

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Functional legal capacities are an essential part of any legal competency. In the area of testamentary competence, however, there has been almost no research focusing on such capacities. This study examines empirically the functional capacities associated with testamentary competence. A total of 332 doctoral-level psychologists selected for their experience in forensic psychology or aging were administered a vignette describing a woman who wants to make a will. The vignette systematically manipulated the variables (a) knowing that the will transfers property, (b) knowing important assets owned, (c) able to name heirs and detail relationship, and (d) able to explain a non-delusional rationale. Participants answered additional questions regarding relevant variables associated with testamentary competence. Results provided support for the hypothesis that the testator's knowledge of transfer, important assets, ability to name heirs and relationship, and ability to express a non-delusional rationale positively related to a finding of testamentary competence. Further, a number of additional factors were indentified that could be useful in future research.

Introduction

Increasing numbers of individuals are living well past the age of 65 (Bureau of the Census, 2000). The individuals who were born following World War II will represent a large percentage of the older population; in 2011, this generation will begin to turn 65, and there will be a rapid growth in number of aging individuals (Bureau of Census, 2000). As the average life span increases, more people are likely to suffer from dementing illnesses or other medical age-related conditions that might adversely affect their capacity to make a will (Redmond, 1987). This may be associated with an increased need for forensic evaluation and testimony in cases where parties contest wills on the basis of lack of testamentary competence (Spar & Garb, 1992). Legally, a person can make a will once s/he reaches age 18; in practice, creating a will is frequently deferred until later in life (Haldipur & Ward, 1996).

Testamentary competence is a legal issue that often requires the expertise, assessment skills, and testimony of mental health professionals. Various researchers have discussed the functional capacities required for different decisional competencies, including competence to consent to treatment (Grisso & Appelbaum, 1998), elderly persons' competence to make personal care and financial decisions (Anderer, 1997), competence to consent to clinical research (Appelbaum & Grisso, 2001), and capacities to waive *Miranda* rights (Grisso, 1998). However, to date, there has been little empirical research regarding the functional capacities associated with competence to make a will. The present study will use a twofold strategy (Douglas et al., 2003) that involves 1) reviewing the legal and psychological literature to obtain functional abilities potentially

relevant to the domain of testamentary competence, followed by 2) surveying professionals whose opinion is relevant to the issue of testamentary competence.

Legal Competence

Competence is a legal construct (Berg, Appelbaum, & Grisso, 1996). Specific competencies are defined in relation to particular domains or functions (e.g., consent to treatment, execute a will, or stand trial). In forensic contexts, competence generally pertains to decision making and communicating capacity (Spar, 2000). The decision of whether someone is competent in a particular domain is decided by the legal decision-maker, using the legal criteria associated with this domain. Although courts are generally guided by the statutes drafted by legislatures, the specific criteria for a given competence may include scientific or technical aspects that are beyond the training of most judges. In these instances, courts can use medical or mental health professionals to help inform their decisions.

Issues of competence arise in both criminal and civil contexts. Legal competencies span many different areas of law. Grisso (2003) suggests that all legal competencies share basic concepts. First, all legal competencies appreciate the autonomy of individuals. Second, they account for the fact that not all individuals possess the ability to make decisions on their own. Third, the legal system uses these legal competencies as a model to make determinations as to who is incapacitated. Finally, if the court finds a person legally incompetent, the government can step in and exert its influence over the usually autonomous individual because it is in "the best interest of the individual and the society" (Grisso, 2003, p. 2).

Defining competence

Competence is specific to a particular legal standard, so while an individual may be competent to carry out one type of legal decision, it does not necessarily mean that s/he will be competent in another area. There are many specific competencies that are outlined in statutes in different areas of the law. For example, there are statutes that describe the standards for competence to consent to hospitalization, to consent to medical treatment, to marry, and to make a will (Sprehe, 2003). Statutes that pertain to competencies tend to use language such as "capacity to know and understand" or "ability to know and understand" (Spar, 2000). While there have been other conceptualizations of competence, there appears to be a consensus among researchers as to the common components that are encompassed in competence standards in the law. This widely accepted definition characterizes competence to include understanding information, appreciating the significance of that information, the ability to use the information in a rational manner, and the ability to clearly communicate a preference (Appelbaum & Grisso, 1995; Dunn, Nowrangi, Palmer, Jeste, & Saks, 2006; Hoge, Bonnie, Poythress, Monahan, Feucht-Haviar, & Eisenberg, 1997; Roth, Meisel, & Lidz, 1977; Saks & Behnke, 1999). The following sections will discuss each of these components.

Ability to understand information. The individual's ability to understand the information presented is the most common ability that appears in legal competence standards (Berg et al., 1996). This standard refers to the individual's "comprehension of the information related to the issue at hand" (Appelbaum & Grisso, 1995). This type of information would involve a factual understanding of the issues. The issues could include the nature and purpose of the decision, the risks and benefits of that decision, the

possible alternatives to that decision, and the associated risks and benefits to the alternative (Sprehe, 2003). In the criminal context, a defendant would need to understand the risks and benefits of having a jury trial versus a bench trial. Similarly, in the civil arena, an individual should understand the risk associated with a particular treatment procedure. The individual need only understand the "concepts involved" rather than the "situation as a whole" (Berg et al., p. 354). In this respect, understanding is a narrower concept than appreciation, which would involve the interrelating of the concepts with the situation at hand. This distinction is discussed further in the following section. Often, the legal system uses both but fails to define either, as evidenced by language found in statutes. As a result, legislative language such as "understand the nature and consequences" is interpreted as including both understanding and appreciating (Berg et al., 1996).

Appreciating the significance of information. One distinction between "understanding" and "appreciating" has been made in the following way: while understanding involves comprehending the issues involved a decision, appreciation encompasses the individual's ability to apply the facts to the situation (Grisso & Appelbaum, 1998). One would know the possible consequences of each alternative and be able to associate this consequence with the immediate situation. Further, it is important that that a person apply the information in a rational manner to his or her own situation (Grisso & Appelbaum, 1995). In the criminal context, a defendant could be found incompetent if he does not accept a plea bargain because he believes that since he is a prophet he will not serve jail time (Roesch, Hart, & Zapf, 1996). Similarly, in a civil case, a person could be considered incompetent if s/he decides not to consent to a

procedure because s/he believes that a hematoma is merely a discoloration of skin rather than evidence of an internal injury. Simply the presence of delusion does not make a person incompetent, nor does an unusual belief. However, when the delusion interferes directly with decision making ability of the presented problem, the likelihood of incompetence rises considerably (Berg et al., 1996).

Ability to use information rationally. For this component, a person should be able to provide a logical reason for the choice. An individual must be able to weigh the risks and benefits of each alternative and make "a reasoned choice among decision alternatives" (Roesch et al., 1996, p. 103). The actual outcome is not the important factor, but rather the person's decision making capacities. The choice must be supported by reality and not based on delusions or illogical thoughts (Roesch et al., 1996). The legal system considers whether the person followed a rational *process* of thinking; whether the ultimate decision is conventional should be irrelevant, as personal values come into play with decision making (Sprehe, 2003).

Ability to clearly communicate a preference. The ability to communicate a choice is two pronged; this component requires a person to come to a decision and impart that decision to others. An individual's choice should be stable and sufficiently unwavering so that the decision can be implemented by the representative (Sprehe, 2003). If a person cannot make up his or her mind, it would be impossible to execute the decision. Further, once an individual makes a decision, s/he has to be able to communicate that decision to the appropriate representative (e.g., an attorney, treating physician, or forensic evaluator). Many courts use this component as the "threshold determination of competence" (Berg et al., 1996, p. 352). Thus, a person who cannot communicate a decision, such as person in

a coma, would be treated as *per se* incompetent. Since the inability to communicate leads to a finding of *per se* incompetence, mental illness can be a contributing factor to this component. A person who cannot convey a decision because of mental illness would be considered incompetent (Roesch et al., 1996).

Assessment of competence

As noted in the previous section, the legal system determines whether an individual's capabilities meet a minimum threshold for a finding of competence. While the legal system makes and interprets the laws dealing with various legal competencies, the legal decision-maker can usefully be informed by medical and behavioral science regarding the presence of relevant capacities in a given case. Mental health professionals perform competency assessments to inform the court on a particular legal decision. While there are many different legal competencies, Grisso (2003) posited a model of components that define all legal competencies. This model presents a structure "to guide assessments toward objectives that are consistent with legal criteria and process in competence cases" (Grisso, 2003, p. 23). He cautions that not all components will fit every legal competence; however, the model serves as a structure to conceptualize assessments of competence. The five components are: 1) Functional, 2) Causal, 3) Interactive, 4) Judgmental, and 5) Dispositional (Grisso, 2003).[1]

Functional. The functional component contemplates what an individual "knows, understands, believes, or can do that is directly related to the competence construct"

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[1] The discussion only includes five components instead of six components that make up all legal competencies. In the 2003 version of Evaluating Competencies, Grisso acknowledges that the original model in the 1986 first edition of the book had six components. He notes that he changed the new model to include five components because he feels that the contextual component can be folded into the functional component without losing meaning. He states that the elimination of a component enhances simplicity.

(Grisso, 2003, p. 25). It focuses on observable behaviors related to the legal competence at issue, with the specific functional abilities differing for each legal competence (Moye, 2004). This component acknowledges that mental and physical health diagnoses, while relevant, are not enough for a finding of incapacity. The focus is on both actual functioning and the hypothetical consequences of particular conditions (Grisso, 2003). A person may have a mental health diagnosis, but it may not be the only thing affecting the functional ability needed for the competence in question. Thus, while a diagnosis is necessary, it would not be sufficient in that case.

Since legal competencies differ, it would follow (under the Grisso model) that the functional abilities associated with each legal competency also differ. Specific functional abilities for each legal competence can be gauged in different ways. First, scientific theory can guide whether a particular ability is relevant to a legal competence (Grisso, 2003). Second, empirical studies of the particular abilities can reveal their relationship to the larger competence (using, for example, a "known groups" design and comparing individuals who are adjudicated as competent and incompetent for each kind of legal competency). Third, case law opinions can lead researchers to investigate what functional abilities comprise a particular competence. Ideally each method would yield similar functional abilities and show a considerable degree of overlap. When theory, empirical study, and law give conflicting notions of the functional abilities constituting a particular competence, it can be hard for the evaluator to decide what abilities are most important in an assessment. Grisso (2003) suggested that all three have utility, as each "provides a somewhat different perspective on the abilities of greatest relevance to legal questions within the defined context" (p. 28).

Causal. The causal component implicates the diagnosis or underlying mental or physical health condition, such as dementia, Alzheimer's Disease, or Bipolar Disorder (Moye, 2004). Diagnosis is usually determined by medical records, patient history, and current clinical presentation. Statutes contain phrases that reference this causal component. Often, law will contain the words "because of" or "as a result of" followed by a mental or physical impairment (Grisso, 2003, p. 29). The causal component is important to the legal system so the system is not misused. For example, faking symptoms of incompetence can be beneficial for a defendant wishing to delay the disposition of charges. Also, the legal system strongly supports individual autonomy, and the court will want to know specifically why it is interfering with the individual's liberty interests (Grisso, 2003).

Interactive. The interactive component focuses on the interaction of the person in a specific situation relevant to the legal competence. The demands of specific circumstances are of paramount importance. This component accounts for the particular "personal, physical, psychosocial, and situational demands" present (Moye, 2004, p. 4). The focus is also on the individual's resources. For example, the demands on an individual are much different for someone who has relatively few financial resources, as contrasted with someone who has a large, complex estate (Moye, 2004). The individual's functional abilities must be considered within the context of his or her environment. Grisso (2003) stated that when the legal system makes a finding of incompetence, the court is really concluding that there is a "person-context incongruity or mismatch" (p. 33).

Judgmental and dispositional. Legal competencies need a judgment that the person-environment "incongruence warrants a finding of legal incompetence" (Grisso, 2003, p. 36). Analyzing the interaction of the person and the demands of the situation in a particular case leads to a judgment of the amount of incongruence necessary to find a person incompetent. Statutory language includes terms such as "sufficient," "significant," and "reasonable degree" which indicates to the court how much incongruency is necessary for a finding of incompetence (Grisso, 2003, p. 36). Further, once a court renders judgment, there is a dispositional response. The response is tailored to the particular legal competence.

Defining Legally Relevant Functional Abilities

In order to gauge whether someone is competent, a mental health professional must assess the functional abilities relevant to the particular legal competence (Grisso, 2003). Forensic assessment instruments can provide a model upon which to conceptualize a legal competence. There are forensic assessment instruments for many legal competencies. The better forensic assessment instruments were developed in a process that involves a number of steps: identification of the legal question and the relevant forensic capacities, operationalization of the variables to be measured (including the forensic capacities), piloting of the instrument to obtain information on its practicality and psychometric properties, full derivation study to clarify information obtained during the piloting step, cross-validation to provide independent information on the instrument, and the development of a manual describing the steps taken, research conducted, and addressing questions of administration and interpretation (Heilbrun, Rogers, & Otto, 2002).

The process of developing a forensic assessment instrument for a legal competence involves taking these steps. The present study will focus, in part, on defining the legally relevant functional abilities or psycholegal capacities (Grisso, 2003) in the area of testamentary competence. These functional legal capacities must be related to the legal competence in question, and also related to theory and empirical knowledge in medical and behavioral science.

The initial domain of potential capacities can be described by examining relevant law and science. Psycholegal researchers at this stage can review case law and statutes to find words and phrases that yield a global sense of the abilities required for the competence (Grisso, 2003). It is comparably important for the psycholegal researcher to examine theory and empirical studies related to the competence in question. While this approach of examining legal and scientific literature is apt to ensure contemplation of factors relevant to a particular psycholegal capacity, the approach "requires considerable judgment and discretion on the part of the professional who reviews the literature" (Douglas, Otto, & Borum, 2003, p. 192).

One approach to gathering relevant data regarding psycholegal capacities involves obtaining the views of experts with knowledge of the particular competency. Usually this approach uses survey techniques, and elicits "information regarding how persons in the field conceptualize a particular issue" (Douglas et al., 2003, p. 192). This approach requires careful consideration of the sample population to be surveyed. The sample chosen must be representative of the population and their opinions. The opinions of unrepresentative samples may have little utility, as a concept list generated by those individuals may be vastly different from the current law (Douglas et al., 2003). Further,

in order to develop an empirically sound forensic assessment instrument, it is necessary to include groups of experts from both the psychological and legal disciplines. This is a multi-step process that involves surveying mental health professionals, legal professionals, or a combination of both (Douglas et al., 2003). For this initial study and as a first step in empirically defining the functional abilities necessary for competence to make a will, I chose to only include psychologists since they would likely be more familiar with the functional abilities necessary to make a will. Once the results from the current study are complete, it will be necessary to include legal professionals in the next step. Future studies can include legal professionals, such as trust and estate lawyers and probate judges, to ascertain whether the functional abilities found in this study correlate to their ideas and legal system's conception of competence to make will.

Defining Testamentary Competence

Evolution of Law

Wills can be contested on one of the following grounds: 1) the will was improperly executed; 2) the will was fraudulent; 3) the testator was vulnerable to undue influence; and 4) the testator lacked capacity at the time the will was executed, also known as lack of testamentary competence (Haldipur & Ward, 1996). This dissertation study will focus on the fourth ground.

American legal conceptualization of testamentary capacity has its roots in English law. In England, the first case to attempt a legal test for testamentary capacity was *Pawlet, Marquess of Winchester's Case* (1601). Lord Coke set out the test for determining whether someone was of "sane and disposing memory" (p. 287). In his analysis, it was not enough that the testator possess memory, but that he has "disposing

memory …a sane and perfect memory," which meant that the individual making the will understood the will's disposition and the reason for the disposition (*Pawlet,* 1601, p. 287-88).

In 1790, Lord Kenyon in *Greenwood v. Greenwood* (1790) laid out the test that closely resembles American law. John Greenwood's brother, William, charged that John was of unsound mind when he executed his will. Lord Kenyon gave the following instruction to the jury: "If he had a power of summoning up his mind so as to know what his property was, and who those persons were that then were the objects of his bounty, then he was competent to make a will" (*Greenwood v. Greenwood,* 1790, p. 943). Moreover, the testator needed only to have capacity at the time of the will, regardless of how "deranged he might be before" (*Greenwood,* 1790, p. 943). Thus, after that case, the prevailing rule was the testator was competent if he knew what he owned and knew the persons who were the "objects of his bounty" (would receive the proceeds of the estate described in the will).

An additional important English case (*Harwood v. Baker,* 1840) added the requirement that the testator must be able to form a rational plan for his disposition. Also, the *Harwood* Court wanted the testator to be capable of making a rational plan while simultaneously retaining information related to the extent of his or her property and the objects of his or her bounty (*Harwood v. Baker*, 1840*).*

The legal standard for testamentary capacity in the United States has been shaped by *Greenwood v. Greenwood* (1790) and *Harwood v. Baker* (1840) (Ross & Reed, 2006). In the first major American decision on testamentary competence, the court in *Harrison v. Rowan* (1820) followed the *Greenwood* test. Later decided cases added to the

testamentary capacity jurisprudence in the oft-cited case of *Delafield v. Parrish* (1862) (Ross & Reed, 2006). The judge in *Delafield* cited the rule of law from *Harwood v. Baker* and *Harrison v. Rowan*, and charged:

> "it is essential that the testator has sufficient capacity to comprehend perfectly the condition of his property, … the objects of his bounty… have sufficient active memory in his mind, without prompting, the particulars or elements of the business to be transacted, and to hold them in his mind a sufficient length of time to perceive … their obvious relations to each other, and be able to form some rational judgment in relation to them" (p. 29).

Once courts established the basis for the law of testamentary competence, this jurisprudence was enhanced with the creation of the insane delusion doctrine. Maryland first described this doctrine in 1848 in *Townshend v. Townshend*. Other states like New York and Pennsylvania soon followed (Ross & Reed, 2006). The New York Court of Appeals case of *American Seaman's Friends Society v. Hopper* (1865) held that a will created on the basis of an unfounded belief would not be executed on the basis of lack of testamentary capacity. The court defined a delusion as a persistent belief in facts "which have no real existence except in [a] perverted imagination, and [are] against all evidence and probability" (*Hopper*, 1865, p. 624). The court's definition of delusion in *Hopper* is often cited by other jurisdictions in the United States even though a state case carries no authority outside its own jurisdiction. However, many courts found the definition to be persuasive (e.g. in Wyoming, *Branson v. Roelofsz*, 1937; in California, *In re Hess' Estate*, 1920; in Maryland, *Johnson v. Johnson*, 1907; in Kentucky, *Layer v. Layer*, 1901; in Oregon, *Potter v. Jones*, 1891) .

Statutes

The Uniform Probate Code, a body of law about wills that many states have adopted, maintains that the testator must be of a "sound mind" at the time of will execution (§ 2-501 (2006)). The Code does not provide much guidance as to what is meant by the phrase "sound mind." There is no national standard for testamentary competence; the standard is set by state statute. Although the phrasing may vary slightly from state to state, a close examination reveals four key components that appear in the majority of statutes (Marty-Nelson & Gilmore, 2000).[2] For example, in Kentucky, to be competent to execute a will, a testator must (1) know the natural objects of her bounty; (2) know her obligations to them; (3) know the character and value of her estate; and (4) dispose of her estate according to her own fixed purpose (Ky. Rev. Stat. Ann. § 394.020). In Colorado, a person has testamentary capacity when (1) she understands the nature of her act; (2) she knows the extent of her property; (3) she understands the proposed testamentary disposition; (4) she knows the natural objects of her bounty; and (5) the will represents her wishes (Colo. Rev. Stat. Ann. § 15-12-407). In Georgia, a testator possesses sufficient mental capacity to make a will if he (1) understood that a will had the effect of disposing of his property at the time of his death, (2) was capable of remembering generally what property was subject to disposition by the will and (3) remembering those persons related to him, and (4) was capable of expressing an intelligent scheme of disposition (Ga. Code Ann. § 53-4-12).

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[2] Only Connecticut has a materially different standard for testamentary competence. In Connecticut's statute, the standard for testamentary competence is the same as the standard for competence to contract, which is a much higher standard (Ross & Reed, 2006). Connecticut's standard for competence to contract requires that an individual understand the nature and effect of the business being transacted (Conn. Gen. Stat. Ann. § 45a-250) (2006).

Accordingly, competence to make a will depends upon whether the testator 1) understands the nature of the will; 2) understands the nature and extent of his or her property; 3) knows the objects of one's bounty; and 4) understands the plan for distribution of assets (Marty-Nelson & Gilmore, 2000). Further, as noted earlier, a testator with an "insane delusion" will not be competent to make a will. Finally, presence of mental disorder or disease is not by itself sufficient for a finding of incompetence (Redmond, 1987).

Case Law

Since statutes dealing with testamentary competence often use vague language and do not provide a clear idea of what is expected of a competent testator, it can be useful to examine relevant case law. When the courts have evaluated the elements of testamentary competence, the courts have not consistently laid out a particular order of examination (Boggess, 2005). There is debate among legal scholars as to whether the testator must meet all the elements of the test in order to be deemed competent. Marty-Nelson and Gilmore (2000) suggest that the testator must meet every element of the test, although adding that the decision-making process is dependent on the facts of the case. The imprecise nature is most likely due to the interplay among each of the factors. In some cases, knowing the nature and extent of the property is most important; in others, the plan of disposition must be weighed most heavily (Marty-Nelson & Gilmore, 2000). Depending on the circumstances and facts of the case, the importance of one factor may greatly outweigh the value attached to the others. However, Boggess (2005) observed that the absence of one factor will not prove fatal to a finding of competence.

Some (e.g., Marty-Nelson & Gilmore, 2000) have argued that judicial opinions in this area are particularly likely to be driven by the court's preferred outcome. Champine (2006) attributes this in particular to whether a particular court might consider testator autonomy or family protection more important. For example, in litigation based on the lack of testamentary capacity which has an unusual disposition and leaves an estate to a charity instead of a next of kin, the court might consider the fairer result to be in favor of family. Nonetheless, each factor has been discussed by legal scholars. This will be addressed in subsequent sections.

Understanding nature of the will. Legal commentators suggest that courts want testators to know that the signed document disposes of his or her property. A testator must also understand that his or her signature executes the document and gives effect to the will (Marty-Nelson & Gilmore, 2000). In other words, the testator must know the legal significance of the document and have an intelligent understanding of the act of making a will (Wolfe, 1997).

Understanding the nature and extent of property. For this prong, a testator needs only a minimum knowledge of assets. However, courts have varying requirements for the requisite level of knowledge. A testator does not need to list all of his or her assets, nor know the exact value of his or her property. Only a general appreciation of the value and extent of holdings is necessary (Wolfe, 1997). Additionally, some courts (e.g., *Brown v. Mitchell*, 1889; *In Re Estate of Schnell*, 2004; *Matter of Estate of Ioupe*, 1994; *Noland v. Noland*, 1997; *Pyle v. Sayers*, 2000) hold that the *capacity* to remember is more important than whether the individual can actually report memory for the specific information. There is disagreement as to whether the size of the estate is material to this

factor. Although some courts say that is not (e.g., *In re Estate of Romero*, 2005; *In re Freeman's Will*, 1925; *Matheson v. Matheson*, 1923), others have held that there is a proportional relationship between the extent of knowledge required and the size of the estate (e.g., *Campbell v. Campbell*, 1889; *Clifton v. Clifton*, 1891; *Drum v. Capps*, 1909; *In re Holmstrom's Estate*, 1940).[3]

Knowing the natural objects of one's bounty. The courts have held that natural objects are "persons related to the testator by ties of blood or affection" (Marty-Nelson & Gilmore, 2000). These would be the individuals that would commonly take under a testator's will. Although the testator is not obligated by law to leave his property to his or her natural objects, s/he does need to know who they are and understand that they are the individuals who would naturally be expected to take under the will (e.g., *Williams v. Vollman,* 1987; *In re Estate of Kuzma*, 1979; *Hamilton v. Morgan*, 1927). "Natural objects" are individuals related to the testator by blood or affection "who would naturally be thought of as a having a stake in the testator's estate" (Marty-Nelson & Gilmore, 2000). An "unnatural disposition" would be one that excluded some or all family members from the will and left the property to someone who would appear to not have much meaning to the testator. A testator who leaves a minimal amount of his estate to his three daughters, but leaves the remainder to his housekeeper, is an example of unnatural disposition (e.g., *In re Colbeck's Will*, 1974). Presence of an unnatural disposition, alone, does not invalidate a will. This notion underscores the importance of testator autonomy, and the freedom to distribute property as desired (Boggess, 2005). The level of detail required of the testator's will varies from court to court. However, courts (e.g., *In re*

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[3] The cases in this section and the next two sections are cited from various jurisdictions to provide examples of the assertions being made.

Estate of Kessler, 1999; *In re Estate of Weeks*, 1997) do not require actual knowledge or understanding, but merely the capacity to know or understand.

Understanding the plan for distribution of assets. For this prong, a testator must have a clear plan regarding the disposition of the will (Marty-Nelson & Gilmore, 2000). Many courts have held that the testator must form a rational plan for the distribution of property (e.g., *In re Estate of Roesler*, 1997; *In re Estate of Washburn*, 1997; *Landmark Trust Inc. v. Goodhue*, 2001). The extent to which the testator needs to understand the estate plan varies by state; however, many courts (e.g., *Doolittle v. Upson*, 1952; *Estate of Mann*, 1986; *Henderson v. Henderson,* 1997; *In re Sanderson's Estate*, 1959; *In re Teel's Estate*, 1971) have determined it takes less mental capacity to make a will than to conduct business or make a contract. Other courts implicitly consider the complexity of estate (Wolfe, 1997).

Freedom from delusions. As noted earlier, an insane delusion is a "false fixed belief not founded on reason and incapable of being removed by reason, which emanates from within the individual and for which there is no evidence" (Kern, p. 336, 1987). The insane delusion can be the product of mental or physical health disease or from the influence of prescribed medications or illicit substances, and must have a direct impact on the will by affecting one of the other four factors (Wolfe, 1997). For example, if a testator's delusion caused lack of knowledge regarding the extent property, the will would not be valid. By contrast, a delusion affecting knowledge of issues irrelevant to the will would have little effect on the finding of competence (Wolfe, 1997).

Theory and Scholarship

To date, most of the scholarly discussion of testamentary competence has been based on theory. Psycholegal scholars have examined the legal standards of testamentary competence and attempted to translate those standards into functional capacities. For example, Marson, Huthwaite, and Hebert (2004) suggested that the testator must know that: 1) s/he will die; 2) a will is a written document; 3) the will transfers property to his or her heirs; and 4) the will takes effect after death. The testator should be able to express his or her understanding verbally. Regarding the knowledge of the nature and extent of one's property, Marson et al. (2004) hypothesized that the testator knows important assets that s/he owns. For example, s/he should know about real estate, financial holdings, bank accounts, and personal property, such as vehicles, and also be able to distinguish between family members and non-family members, such as friends and caretakers. Marson and colleagues also observed that the testator should also understand that s/he is free to disinherit natural heirs. Further, the testator should be able to name his or her heirs and detail the relationship. Finally, for the prong of understanding the plan of distribution, Marson et al. (2004) theorized that the testator must be able to show his knowledge of the disposition plan. Specifically, the testator must articulate some basic plan for distributing property to his or her heirs. The testator should be able to articulate the consequences of the will, explain the rationale for specific bequests, and justify why certain individuals are excluded. Further, s/he must know the identity of the will's executor, who is the person appointed by testator to oversee the distribution of assets. Marson et al. (2004) also pointed out that the will must not be the product of an insane delusion.

Melton, Petrila, Poythress, and Slobogin (2007) proposed that the question of testamentary competence is "best conceptualized as a functional one" (p. 397). They noted the types of questions that should be asked for each element of testamentary competence. First, to assess whether a testator knows that a will is being made, they suggested that the evaluator ask if the testator knows what a will is, what it is intended to do, and why s/he is making a will at the particular time. This last question might alert the evaluator to possible delusional thinking on the part of the testator. Second, an evaluator should probe whether the testator's information about his or her property is correct, in order to test whether a testator knows about the nature and extent of his property. There should be questions about jobs, salary, living situation, and personal property. Melton et al. commented that this information is important "to determine whether subjects' assessments of their possessions are realistic or are instead wholly at odds with the facts" (2007, p. 398). Questions aimed at discerning the testator's actual values or preferences more accurately reflect his or her knowledge of the "natural objects of bounty," making this standard preferable to the "reasonable person" standard because the latter may not be consistent with the testator's values and preferences. The testator might be making a disposition that many would find odd or unusual, or based on hostility towards one of his natural heirs. So long as the disposition is not based on a delusion, the testator should be free to dispose of his or her property in any way that s/he chooses. For this element, evaluators should ask questions that would have the testator identify family members, other people important in the testator's life, and his or her relations with individuals in both groups (Melton et al., 2007). For the final element, knowledge of a plan for distribution, Melton and colleagues recommended that the testator know about the

general consequences of the planned disposition, allowing the evaluator to discern whether there is delusional thinking involved in making this decision.

The MacArthur Treatment Competence study can offer a theoretical model regarding the types of functional abilities that a researcher might want to assess in the area of testamentary competence (Grisso et al., 1995). These investigators identified the four elements of competencies noted earlier: communicating a preference, understanding information, appreciating the significance of that information, and using the information in a rational manner. Many statutes on testamentary competence include these four elements. [4] In the MacArthur study, the first of these elements--communicating a preference--was operationalized as actually selecting a choice. In the area of testamentary competence, a person would have to communicate his or her choice about how that person would distribute assets.

The second element involves understanding relevant information. Grisso and colleagues tested the comprehension of the nature of the treatment, the risks and benefits, and the alternatives. For testamentary competence, a testator can be asked about the nature of the disposition, the probable benefits and risks of the disposition, and whether there are any better alternative dispositions.

For the third element, a person must appreciate the significance of this information. In the MacArthur study, individuals were asked about the benefits of the treatment generally for their condition, the benefits of a specific treatment, and the likelihood of improvement without treatment (Grisso et al., 1995). The individuals also had to explain their reasoning, and were given a hypothetical situation which nullified

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[4] For examples of statutory language from various jurisdictions, see page 13.

those reasons. In the same way, a person being evaluated for testamentary competence could be asked about the benefits of a will devise (a gift given by the will),[5] the benefits of his or her specific devises, and the likely consequences of such a devise. Further, the person would need to give reasons for the manner in which s/he gave away property in the will. Finally, a person must be able to use the information in a rational manner. Grisso et al. (1995) tested the reasoning process of the individuals by having participants seek information, consider the consequences of various treatment alternatives, compare two treatment alternatives, weigh multiple treatment alternatives simultaneously, consider the risks and benefits, and apply personal preferences consistently. Similarly, a testator should ask about information related to the disposition, consider the consequences of various will devises, compare two will devises, consider many possible will devises at one time, and consistently utilize personal preferences.

There is relatively little empirical research on the nature of testamentary competence (Marson et al., 2004). The limited available empirical work will now be reviewed. Baird Brown, an attorney, created the Legal Capacity Questionnaire (Walsh, Brown, Kaye, & Grigsby, 1994). The Legal Capacity Questionnaire helps attorneys understand their clients' testamentary competence prior to execution of the will. The questionnaire focuses on three of the four elements of testamentary competence: understanding the nature and extent of property, knowing the objects of one's bounty, and understanding the plan for distribution of assets (Walsh et al., 1994). To assess whether the testator knows about the natural objects of one's bounty, questions require

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[5] There was previously a distinction between a devise and a bequest in the case law. While both are gifts, a devise is a gift of realty (real property, land) under a will, whereas a bequest is gift of personalty (personal property). The Uniform Probate Code has eliminated this distinction, and now all gifts are called devises (Pennell & Newman, 2005).

the testator to know whether s/he is married, the spouse's name, and names and addresses of children and siblings. Further, to gauge whether the testator understands the nature and extent of his or her property, questions require the testator to know about kinds of property, kinds of financial transactions, and perform basic math. Finally, to test understanding of the distribution plan, the testator is asked to differentiate between tangible and intangible objects (e.g., a car versus religious beliefs) and whether they can be distributed by a will (Walsh et al., 1994).

Brown and his colleagues also collected empirical data on the instrument. They collected data to determine the properties of the Legal Capacity Questionnaire. First, the group took a random sample of elderly individuals from three different living environments – community residences, retirement homes, and skilled nursing facilities. The sample totaled 65 people with 18 people from community residences, 19 from retirement homes, and 28 from skilled nursing facilities. The individuals were administered the Legal Capacity Questionnaire. Persons in the skilled nursing facilities scored the lowest on the Legal Capacity Questionnaire. The group attributed this finding to the fact that many of the individuals in the skilled nursing facilities had advanced impairments. People who lived in community residences scored the highest; however, the authors suggested that this sample may not generalize well to the general population (Walsh et al., 1994). The age of the individuals interviewed ranged from 60-99.

Next, the group compared the subject's score on the Legal Capacity Questionnaire to other mental status and behavioral instruments. Scores from the Legal Capacity Questionnaire showed a strong relation to the Mini-Mental Status Exam, a method to test the cognitive mental status of individuals. Both measures have a maximum score of 30;

however, a score of 23 on the Mini-Mental Status Exam, indicating cognitive impairment, is equivalent to a score of 25 or 26 on the Legal Capacity Questionnaire, which indicates that a lawyer can be confident that a subject has capacity. The Legal Capacity Questionnaire was also compared to the Behavioral Dyscontrol Scale, an instrument that has "demonstrated the ability to predict behavioral disorders associated with frontal lobe syndromes" (Walsh et al., 1994, p. 5). The authors chose the Behavioral Dyscontrol Scale for comparison because the scale can be an indicator of an individual's capacity to organize and carry out a plan. The study showed a high correlation between the scores on the Legal Capacity Questionnaire and the Behavioral Dyscontrol Scale. Finally, the researchers established cut off scores for the Legal Capacity Questionnaire. The authors caution that the scores should be used as general guidelines to continue estate planning with a client. Further, they suggest that lawyers should consider the living situation and age of the client with reference to the normative data (Walsh et al., 1994). There are 3 score ranges. If an individual scores 24 or above, the High range, on the instrument, a lawyer would have confidence to proceed with estate planning, even though there may be mild impairments. The impairments would not rise to the level of interference. If an individual scores a 23, 22, or 21 (Borderline), then it is suggested that lawyer proceed with caution, investigate more thoroughly or consider seeking assistance from mental health evaluator. Finally, if an individual scores less than 20, the Low range, the lawyer should proceed with "extreme caution" and contact a mental health professional (Walsh et al., 1994).

Although the Legal Capacity Questionnaire is a significant step in the study of testamentary competence, it has several important limitations. First, the questionnaire is

not based on an underlying conceptual model. Second, there are limited normative data available for older adults. Third, the questionnaire does not address the issues of understanding a will or psychotic symptoms (Walsh et al., 1994).

Spar, Hankin, and Stodden (1995) surveyed probate judges' views on procedural aspects and expert testimony in testamentary competence cases. Judges were asked about mental capacity and the factors that influence it. The investigators sent a questionnaire to 300 probate judges in the National College of Probate Judges and 119 judges responded. Results showed that 52% of the judges viewed a testator merely recognizing his or her property from a list as sufficient for knowing the nature and extent of property. Based on the results, the researchers also thought it would be desirable that there should be additional testing done if the testator did not spontaneously recall the information (Spar et al., 1995). Additionally, while 56% of the judges felt that a finding of incompetence required the presence of mental illness, a substantial minority (24%) felt there was not a relationship between mental illness and incompetence. The authors cited a limitation to their study and cautioned that the sample might not be random as the 119 judges only represented 20% of the membership in National College of Probate Judges. Given the very limited availability of empirical studies on testamentary capacities, it is clear that we need more empirical research in this area.

Practical Applications

The assessment of forensic issues may be either present-state (capacities as they exist at the time the assessment is conducted) or retrospective (focusing on capacities that existed at a designated time in the past). Assessment of testamentary competence may be either. It may be conducted around the time a will is being made (or changed), or it may

be done after the testator has died and the will is contested. Indeed, testamentary competence most often becomes an issue when someone challenges the will (Redmond, 1987). An individual is presumed to be competent to make a will, and the person contesting the will has the burden of proving the testator's incompetence.

Retrospective assessment of testamentary competence. The most common circumstance for assessing competence to make a will is following the testator's death (Regan & Gordon, 1997). In a retrospective assessment, an evaluator reviews relevant records, including medical records, and conducts collateral interviews with family members, friends, caretakers, and any other individuals whose observations may be relevant. In formulating his or her opinions about the testator's competence, the evaluator will draw inferences about the individual's mental state at the time of will's execution (Bartol & Bartol, 2004). Records can be helpful in this process, but may contain largely irrelevant or insufficient information.

Because of the inferred relationship between certain disorders and testamentary competence, a testator who had been diagnosed as having one or more such disorders may be susceptible to having his or her will overturned by a court. It is certainly true that disorders such as Alzheimer's disease, dementia, and metabolic disorders, as well as severe mental illnesses such as schizophrenia and bipolar disorder, can impair an individual's testamentary competence (Redmond, 1987). Thus, a retrospective assessment of a testator who was diagnosed with such disorders can place the contestants of a will at an advantage. It can be difficult for the evaluator to determine what effect, if any, the testator's illness had on testamentary competence. Detailed documentation and records can sometimes ameliorate this disadvantage when the information is presented

with enough specificity to provide the evaluator with a clearer picture of the illness' impact on the testator (Redmond, 1987).

The four elements that make up testamentary competence can be particularly difficult to assess retrospectively. In a retrospective inquiry, an evaluator will have great difficulty providing meaningful information regarding whether the testator understood the nature of the will. Further, if the testator is dead, the existence of a will provides *prima facie* evidence that the testator possessed a basic understanding (Melton et al., 2007). Regarding the knowledge of nature and extent of property, a retrospective assessment is based on objective information contained in the will. The evaluator will assess if the testator's disposition matches his assets—whether the testator is giving away something that he has the power to bequeath. Additionally, if some items of property are missing, the evaluator will not know from considering only the will whether the testator merely forgot the items or lacked the ability to recall the items.

An inquiry into the testator's knowledge about the objects of bounty is more complicated when the testator is dead. Under this circumstance, the evaluator must "reconstruct the testator's relationships with significant others by relying on extrinsic sources" (Melton et al., 2007, p. 398). These extrinsic sources would be collateral interviews with individuals who knew the testator. Complicating matters, some of the sources of data may be biased, and therefore when the interviewed individuals have a stake in the will contest, their information is suspect. Equally problematic is the investigation about whether the testator understood his disposition plan. In a retrospective assessment, an evaluator must glean from outside source material as to why the testator made a particular disposition. A testator's direct heir may contest the will

because the testator excludes his natural heirs in favor others who are deemed "unnatural". The evaluator must attempt to determine what led to the testator's decision (Melton et al., 2007).

Present-state assessment of testamentary competence. In some cases of assessment of testamentary competence, the testator is available for evaluation. This can occur when an individual's attorney advises the client to obtain an evaluation prior to execution of the will in the hope of preventing the contesting of the will after the testator has died. Prospective assessment is particularly desirable when the testator exhibits signs of dementia, or has a psychiatric or physical disorder that caused periods of incapacity (Bartol & Bartol, 2004). Further, an attorney should suggest that a testator have a prospective assessment if the attorney anticipates the contesting of the will because of 1) contentious relations between the testator and his heirs, 2) a disposition to someone other than the testator's natural heirs, or 3) a highly-valued estate.

There are some risks to having an evaluator conduct a prospective assessment. There is no guarantee that the evaluator will find that a testator has the capacities associated with testamentary competence. The evaluator must make an impartial determination based on the facts at hand (Specialty Guidelines for Forensic Psychologists, 1991). The testator may lose the chance to make a will if the evaluation is conducted under circumstances that allow all parties (testators and heirs) access to the findings. Prospective assessments of testamentary competence are reportedly infrequent, so it is unclear how a court would consider such evidence (Champine, 2006). [6] However,

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[6] How frequently the evaluation of testamentary capacity is present-state versus retrospective is an empirical question worth investigating. There is limited empirical data on the subject. Champine (2006) searched Westlaw and found 104 decisions from 2000-2004 that involved the issue of whether the testator's

even with these limitations, a prospective assessment should often yield evidence superior to that typically available in traditional probate (Champine, 2006). A clearer understanding of the functional abilities that comprise testamentary competence would provide an important first step in the larger process of developing a tool to measure such capacities in a reliable and valid way, which would then be available to assist courts in deciding and attorneys in representing clients on the legal question of testamentary competence.

Current Study

Rationale

The current study seeks to define legally relevant functional abilities that should be evaluated to determine whether is a person is competent to make a will. There are three main justifications for conducting this study now. First, the Uniform Probate Code (§ 2-501, 2006) requires that a testator be of "sound mind" when creating a will. Courts in different jurisdictions have noted various factors to consider in determining whether the testator is of sound mind. The Supreme Court and the federal legislature have not set forth a standard test to determine competence to make a will, as testamentary competence is governed by state statutes. Although many state courts consider similar elements, there is no apparent consensus on the functional demands required. Second, researchers have noted that there is little empirical research on the functional abilities needed to make a will (Champine, 2006; Marson et al., 2004). Finally, unlike some other competencies,

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mental state satisfied the standard for testamentary capacity. Of 104 cases, 5 cases involved present state evaluations of testamentary capacity. She found perfect correlation between the expert assessment and the outcome of the will contests. However, she does note that a larger sample would not yield the same results. A larger sample is presently not available because of the infrequency of present state evaluations done by experts.

there is no instrument that assists forensic mental health evaluators in determining a testator's competence to make a will. With the increased life span, elderly people will make up a larger portion of the population. Since individuals often wait until later in life to make wills (Haldipur & Ward, 1996), there will be an increased need to evaluate competency in this area.

The research will focus on the psycholegal constructs and functional abilities that appear relevant to the domain of testamentary competence. The study will survey professionals whose opinion is relevant to the issue of testamentary competence. The broad research question that will be addressed in the proposed study focuses on the functional abilities that comprise testamentary competence. In order to address this question, I will examine several variables that the literature suggests are the most promising and relevant.

Hypotheses

It is hypothesized that when presented with a vignette and the variables of (a) knowing that the will transfers property, (b) knowing important assets owned, (c) able to name heirs and detail relationship, and (d) able to explain a non-delusional rationale are manipulated, there will be a statistically significant main effect for each of these four factors, with the dependent variable consisting of respondents' rating of the extent to which the enumerated capacities are sufficient to allow the testator to make a will. These four variables correspond with the four elements (understanding nature of will, understanding nature and extent of property, knowing natural objects of bounty, and understanding the plan for distribution of assets) most often associated with competence to make a will.

More specifically, it is hypothesized that a survey of practicing psychologists with interests in aging or forensic psychology will result in the following based on their self report.

1. The testator knowing that the will transfers property will be associated with a higher rated level of sufficient capacity for making a will than when the testator does not know that the will transfers property.
2. The testator knowing his or her important assets will be associated with a higher rated level of sufficient capacity for making a will than when the testator does not know his or her important assets.
3. The testator being able to name his or her heirs and detail the relationship will be associated with a higher rated level of sufficient capacity for making a will than when the testator cannot name his or her heirs.
4. The testator being able to explain his or her distribution plan in a non-delusional way will be associated with a higher rated level of sufficient capacity for making a will than when the testator cannot explain his or her distribution plan in a non-delusional way.
5. There will be a statistically significant interaction among all 4 variables (knowing that the will transfers property, knowing important assets owned, ability to name heirs and detail relationship, ability to explain a non-delusional rationale).
6. Demographic characteristics of the participant (race, gender, years of practice, number of forensic evaluations conducted in past year and in career, number of competence to make a will evaluations conducted in

past year and in career, knowledge of state regulations, and work location) will be related to rating level of sufficient capacity.

Method

Participants

Participants were doctoral-level psychologists who are members of the American Psychological Association, who express a particular interest/expertise in two areas: aging or forensic psychology. All participation was voluntary. Inclusion criteria included fluency in English, as all measures were only presented in English, and age of at least 18 years. A total of 374 psychologists (27% of the total of 1385 who were invited to participate) responded to the survey. A number of surveys (11%, n = 42) had to be excluded because they were missing a number of items. Overall, 190 (57.2%) participants were male, 140 (42.2%) were female, and 2 (0.6%) did not indicate their gender. The ethnic breakdown of the participants consisted of 2.4% African American/Black (n = 8), 90.4% Caucasian (n = 300), 1.5% Asian American (n = 5), 2.4% Hispanic/Latino (n = 8), and 2.1% Other (n = 7). One participant (0.3%) did not indicate his or her ethnic background. There was a wide range of years of practice reported from psychologists from those who have been practicing for a couple of years to those who have been practicing for many years (range = 2-51 years). The mean number of years of practice reported was 21.72 with a standard deviation of 11.11. The median number of years of practice reported was 21.00, and the mode was 20.00 years.

A power analysis revealed that for a 2 x 2 x 2 x 2 ANOVA (all between subjects factors) with an alpha of .05, a medium effect size (f = .25) for knowing that the will transfers property, knowing important assets owned, ability to name heirs and detail

relationship, ability to explain a non-delusional rationale, and a medium effect size (f = .25) for the interaction of knowing that the will transfers property, knowing important assets owned, ability to name heirs and detail relationship, ability to explain a non-delusional rationale, and all four variables together, 332 participants yielded a power of 1.00 for the corrected model. This indicates that it is very likely that a result was detected if it existed.[7]

Design

The study uses a 2 (knowing will transfers property, yes or no) x 2 (knowing important assets owned, yes or no) x 2 (able to name heirs and detail relationship, yes or no) x 2 (able to explain a non-delusional rationale, yes or no) between subjects design. Sixteen versions of a vignette, systematically manipulating the 4 dichotomous variables, may be seen in Appendix B. The vignette was adapted from Melton et al. (2007). Since testamentary competence is determined by state statute, there is no single standard that every state follows. Furthermore, the scenario from Melton et al. (2007) closely matched the variables that this study will consider.

In the vignette, the four variables are as follows: (1) knowing that the will transfers property, (2) knowing important assets owned, (3) ability to name heirs and detail relationship, and (4) ability to explain a non-delusional rationale. Each variable is dichotomous. These four variables were chosen because they represent the elements that comprise competence to make a will. Within each element, the variable selected was the one that appeared most frequently in the legal and psychological literature.

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[7] The power value was the observed power reported in the SPSS output. The power was also determined according the power tables in Cohen (1988), which indicated a power greater than .995.

The dependent variable was the respondent's rating of the sufficiency of the testator's capacities to make a will. For each vignette, respondents will rate this sufficiency on a five point scale: entirely insufficient, largely insufficient, mixed evidence, largely sufficient, and entirely sufficient. Additionally, the respondent was asked whether additional variables are important in gauging whether a testator has sufficient capacities to make a will. These additional survey variables were selected because those variables appeared most frequently in the legal and psychological literature.

Procedures

Each participant in the sample of psychologists was randomly assigned to one of sixteen groups. All participants received a brief email that explained the study and the procedures and one follow-up reminder email approximately two weeks after the first email (Appendix A). The email informed the psychologists that the survey should take no longer than 10 minutes to complete. Each psychologist was invited to participate in an online survey. Care was taken to protect the anonymity of the participants; no identifiable information was collected from them. The first part presented the participants with one of the sixteen vignettes (Appendix B) depending on the group to which the psychologist was randomly assigned, and the participant was asked to answer a question based on the vignette. Next, the participants were presented with a survey about important variables relevant to testamentary competence (Appendix C), followed by demographic questions asking about gender, race, geographic area of practice, years of experience, experience with psychological evaluations generally, experience with

evaluations of competence to make a will, knowledge of applicable law, and work location (Appendix D).

Analyses

The main statistical analysis was a 2 (knowing will transfers property) x 2 (knowing important assets owned) x 2 (able to name heirs and detail relationship) x 2 (able to explain to a non-delusional rationale) Analysis of Variance (ANOVA). ANOVA is the proper analytic tool when analyzing a factorial design of four independent variables and two levels of each independent variable**,** and a continuous dependent variable. On the vignette, psychologists rated the dependent variable, sufficiency of capacities for making a will, on a five point scale: entirely insufficient, largely insufficient, mixed evidence, largely sufficient, entirely sufficient. For statistical analysis, this scale was treated as continuous.

For the survey questionnaire, there were 21 variables that participants were asked to rate on a 5-point scale of importance in determining capacity (1=extremely unimportant, 2= unimportant, 3= between unimportant and important, 4=important, 5=extremely important). Multiple t-tests were used to assess whether the mean of each variable was significantly different from the scale midpoint (3).[8] Variables, which had significantly higher means than 3, were retained for future research, while variables with means significantly lower than 3 were discarded. Bivariate analyses between all of the 21 variables were run and a correlation matrix to determine which variables are significantly related was created. Finally, relevant demographic variables were analyzed.

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[8] Running multiple t-tests could result in familywise error. To adjust, I used the conservative Bonferroni method; however, without the adjustment typically gives better results.

Results

Descriptive Statistics

Participants were asked about the number of forensic evaluations that they conducted in the past year and in their career. The data were first analyzed for the presence of outliers[9]. There was a large range in the number of evaluations conducted in the past year. The mean number of forensic evaluations conducted in the past year was 64.10 with a standard deviation of 152.64, and the median and mode were 20.00 and 0.00 respectively. Similarly, there was a large range reported for the number of forensic evaluations conducted in their career. The mean number of evaluations reported was 1077.42 with a standard deviation 2082.96, and the median and mode were 300.00 and 0.00 respectively.

Since the study was focused on the functional capacities that comprise competence to make a will, participants were asked about the number of testamentary competence evaluations they conducted in the past year and in the their career. The range reported was much smaller than for forensic evaluations. The mean number of evaluations of testamentary competence conducted in the past year was 0.66 with a standard deviation of 2.18, and the median and mode were both reported as 0.00. For the number of testamentary competence evaluations conducted in their career, the mean number reported was 9.76 with a standard deviation of 33.54, and the median and mode were both reported as 0.00.

As determinations of testamentary competence are guided by local laws, participants were asked to report their state of practice. All of the states were represented

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[9] Any number that fell beyond three standard deviations from the mean was discarded from the data for purposes of statistical analyses.

in the responding sample except for Delaware, Louisiana, Mississippi, North Dakota, South Carolina, and Utah (see Table 1). The sample also included respondents from Puerto Rico and Canada. A small number of participants reported that they do not practice (3.0%, n = 11), and 3 people (0.9%) did not respond to that question. The majority of participants reported working in an urban setting (56.3%, n = 187), while the rest of sample noted that worked in either a suburban setting (30.4%, n = 101) or a rural setting (12.0%, n = 40). A small number of participants (1.2%, n = 4) declined to answer that question. A little than more than half of the sample (56.0%, n = 186) were not familiar with their state's regulations pertaining to wills, while the rest were familiar (43.1%, n = 143). An extremely small number of individuals did not answer the question (0.9%, n = 3).

Results of Specific Hypotheses

A 2 (knowing will transfers property) x 2 (knowing important assets owned) x 2 (able to name heirs and detail relationship) x 2 (able to explain to a non-delusional rationale) ANOVA was conducted to examine the relationship among the four factors garnered from the psycholegal literature and the dependent variable of sufficiency of competence to make a will. ANOVA has three assumptions: 1) normality, 2) homogeneity of variance, and 3) independence. As to the first assumption, the populations from which the samples are drawn must be normal. With a large sample, this is usually not an issue; further, ANOVA cutoff scores are reasonably accurate even when the population is moderately far from normal. The second assumption, homogeneity of variance, refers to the assumption that the variances in the different groups in the design are identical or the spread of scores in each cell in the design is equivalent. The result

from Levene's Test for Equality of Variable shows that result is not significant ($p < .496$), suggesting that the assumption of equal variances has not been violated. Finally, independence means that observations in each sample must be independent. See Table 2 for a summary of the results of the ANOVA analysis.

Hypotheses were tested as follows:

The testator knowing that the will transfers property will be associated with a higher rated level of sufficient capacity for making a will than when the testator does not know that the will transfers property.

The results indicated that there was a main effect for the testator knowing that the will transfers property [$F(1, 315) = 6.07$, $p < .014$]. The effect size was small (partial eta squared = .02). Post-hoc tests were unnecessary, as the variable was dichotomous. The mean for the testator knowing that the will transfers property was 2.71 with a standard deviation of .977, while the mean for the testator not knowing that the will transfers property was 2.60 with a standard deviation of .897.

The testator knowing his or her important assets will be associated with a higher rated level of sufficient capacity for making a will than when the testator does not know his or her important assets.

The results indicated that there was a main effect for the testator knowing important assets owned [$F(1, 315) = 31.466$, $p < .001$], with a medium effect size (partial eta squared = .09). Post-hoc tests were unnecessary, as the variable was dichotomous. The mean for the testator knowing important assets owned was 2.90 with a standard deviation of .907, while the mean for the testator not knowing important assets owned was 2.40 with a standard deviation of .904.

The testator being able to name his or her heirs and detail the relationship will be associated with a higher rated level of sufficient capacity for making a will than when the testator cannot name his or her heirs.

The results indicated that there was a main effect for the testator being able to name heirs and detail relationships [$F(1, 315) = 80.053$, $p < .001$], and the effect size was large (partial eta squared = .203). Post-hoc tests were unnecessary, as the variable was dichotomous. The mean for the testator being able to name heirs and detail relationships was 3.06 with a standard deviation of .834, while the mean for the testator not being able to name heirs and detail relationships was 2.25 with a standard deviation of .862.

The testator being able to explain his or her distribution plan in a non-delusional way will be associated with a higher rated level of sufficient capacity for making a will than when the testator cannot explain his or her distribution plan in a non-delusional way.

The results indicated that there was a main effect for the testator being able to explain the distribution plan in a non-delusional way [$F(1, 315) = 11.508$, $p < .001$]. The effect size was small (partial eta squared = .04). Post-hoc tests were unnecessary, as the variable was dichotomous. The mean for the testator being able to explain the distribution plan in a non-delusional way was 2.81 with a standard deviation of .936, while the mean for the testator not being able to explain the distribution plan in a non-delusional way was 2.48 with a standard deviation of .914.

There will be a statistically significant interaction among all 4 variables (knowing that the will transfers property, knowing important assets owned, ability to name heirs and detail relationship, ability to explain a non-delusional rationale).

Results revealed that there was a significant four-way interaction among the four independent variables [$F(1, 315) = 4.547$, $p < .034$]. This effect size was small (partial eta squared = .01). The four-way interaction was graphed (See Figure 1). Analysis of the graph showed two significant two-way interactions, as discussed below.

When the testator has a non-delusional rationale and knows his heirs, there is no interaction between his knowing he is transferring property and knowing his important assets [$F (1, 90) = .045$, $p < .833$]. When the testator has a non-delusional rationale and knows his important assets, but does not know his heirs, he is considered less competent if he does not know he is transferring property ($M = 2.29$) than if he does ($M = 3.11$) [$t(33) = -3.006$, $p < .005$]. However, if the testator has a non-delusional rationale, but does not know his heirs or his important assets, then his level of rated competence does not depend on whether he knows he is transferring property ($M_{NO} = 2.22$; $M_{YES} = 2.17$; $t(45) = .216$, $p < .830$). Overall, when the testator has a non-delusional rationale but does not know his heirs, there is interaction between knowing important assets and knowing he is transferring property [$F(1, 78) = 5.822$, $p < .018$]. This interaction is significant. When a Bonferroni correction is applied, the main effects and interaction remain.[10]

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[10] Even though multiple analyses were conducted, alpha was not adjusted with a Bonferroni correction. A correction did not seem necessary, as only three analyses were conducted. However, a Bonferroni correction would have set alpha at .02, which would not have changed the results from what was reported.

When the testator knows his heirs, but his rationale is delusional and he doesn't know he is transferring property, it does not make a difference whether he knows his important assets ($M_{NO} = 3.00$; $M_{YES} = 2.82$; $t(37) = .681$, $p < .500$). However, when the testator knows his heirs and knows that he is transferring property, but has a delusional rationale, he is seen as less competent when he does not know his important assets ($M = 2.64$) than when he does ($M = 3.29$) [$t(29) = -2.531$, $p < .017$]. Overall, when the testator has a delusional rationale but knows his heirs, there is an interaction between knowing important assets and knowing he is transferring property [$F(1, 66) = 4.881$, $p < .031$]. This interaction is significant, and when a Bonferroni correction is applied, the main effects remain but the interaction approaches significance.[11] When the testator has a delusional rationale and does not know his heirs, there is no significant interaction between knowing important assets and knowing that he is transferring property [$F(1, 81) = .122$, $p < .728$].

Additionally, the ANOVA results also indicated a significant two-way interaction of whether the testator knows that the will transfers property and whether the testator knows important assets owned [$F(1, 315) = 7.148$, $p < .008$] with a small effect size (partial eta squared = .02) (see Figure 2). An analysis of simple main effects revealed that there was a significant result for whether the testator knows that the will transfers property when the testator knows important assets owned [$F(1, 328) = 6.06$, $p < .014$]. Similarly, the analysis also resulted in a significant effect for whether the testator knows important assets owned when the testator knows that the will transferred property [F(1,

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[11] Even though multiple analyses were conducted, alpha was not adjusted with a Bonferroni correction. A correction did not seem necessary, as only three analyses were conducted. However, a Bonferroni correction would have set alpha at .02, which would not have changed the results in terms of the interaction which would then only approach significance.

328) = 28.52, $p < .001$]. All other interactions, the five remaining two-way and the four three-way, produced non-significant results.

Demographic characteristics of the participant (race, gender, years of practice, number of forensic evaluations conducted in past year and in career, number of competence to make a will evaluations conducted in past year and in career, knowledge of state regulations, and work location) will be related to rating level of sufficient capacity.

A multiple regression was performed using sufficiency to make a will as the outcome variable (see Table 3). The following predictors, all participant attributes or ratings, were used: race, gender, years of practice, number of forensic evaluations conducted in past year and in career, number of competence to make a will evaluations conducted in past year and in career, knowledge of state regulations, and work location. Variables with more than two groups (race and work location) were dummy coded to make two groups. There are a number of assumptions when using a multiple regression. First, Stevens (1996) suggests that "for social science research, about 15 subjects per predictor are needed for a reliable equation" (p. 72). There were at least 29 participants for each predictor variable. Also, there should be no perfect multicollinearity. A scan of the correlation matrix for the predictor variables found that none of them correlated very highly with another (as defined by correlations of above .80 or .90). Further, Variance Inflation Factor (VIF) and the tolerance statistic indicate that there was not an issue with multicollinearity. There should also be a lack of autocorrelation; this can be checked using the Durbin-Watson test, which tests for serial correlations between errors. Field (2009) notes that "as a very conservative rule of thumb values less than 1 or greater than

3 are definitely cause for concern" (p. 221). However, the Durbin-Watson statistic for this sample was 1.573, suggesting the assumption was not violated. Variables were checked for outliers, and any values that fell beyond three standard deviations from their respective mean were discarded for purposes of the multiple regression analysis. The scatterplot (Figure 3) reveals the assumptions of homoscedasticity and linearity appear not to have been violated. Finally, the histogram (Figure 4) similarly shows that the data is roughly normal.

The overall model for the multiple regression analysis was significant [$F(10, 284) = 2.334$, $p < .012$]. These variables predict 7.6% of the total variance ($R^2 = .076$). Only three variables (years of practice, number of forensic evaluations conducted in the past year, and number of forensic evaluations conducted in career) contributed significantly to predicting this outcome. The results suggest that psychologists who have greater years of practice and more practice conducting forensic evaluations in a given year are more likely to rate a testator as having sufficient capacity to make a will. Conversely, a psychologist with more opportunities to conduct forensic evaluations over his or her career will be less likely to rate a testator as having sufficient capacity to make a will. This result seems to be inconsistent and will be addressed later in the discussion section.

In light of the idiosyncratic finding mentioned above, number of forensic evaluations conducted in the past year and number of forensic evaluations in career were recoded. First, the variables were recoded into 0s, which was psychologists who reported conducting no evaluations, and 1s, which was psychologists who reported conducting more than one evaluation. This recoding was done both for number of forensic evaluations in past year and the number of forensic evaluations in career. For the past

year variable, there were 93 coded as 0 (no experience with forensic evaluations), and 232 coded as 1, (experience with forensic evaluations). The multiple regression analysis was rerun with the recoded variables, and the overall model was not significant [F (10, 284) = 1.361, $p < .198$]. Number of forensic evaluations conducted in the past year and number of forensic evaluations conducted in career were in the same direction unlike the original regression; however, these variables did not contribute significantly to the overall model.

To test the effects of the recoded variable of number of forensic evaluations conducted in the past year on the rating of sufficiency of competence to make a will, a one-way analysis of covariance (ANCOVA 1) was conducted. To assess for the existence of covariates, between groups tests were run on the demographic variables. The results indicated that the two groups in the recoded variable of number of forensic evaluations conducted in the past year differed significantly for gender [χ^2 (1, n = 324) = 4.87, $p < .027$], knowledge of state regulations [χ^2 (1, n = 324) = 9.89, $p < .002$], and number of competence to make a will evaluations conducted in career [(M_0=2.82, SD_0=10.03; M_1=12.16, SD_1=38.66; t(288) = -3.367, $p < .001$]. Thus, gender, knowledge of state regulations, and number of competence to make a will evaluations conducted in career were used as covariates in the ANCOVA 1 analysis. Results showed that there was not a significant difference in rating of sufficiency of competence to make a will for the no experience and experience groups in the past year after controlling for the covariates [F(1, 311) = .51, $p < .48$, partial eta squared = .002].

To test the effects of the recoded variable of number of forensic evaluations conducted in career on the rating of sufficiency of competence to make a will, a one-way

analysis of covariance (ANCOVA 2) was conducted. To assess for the existence of covariates, between groups tests were run on the demographic variables. The results indicated that the two groups in the recoded variable of number of forensic evaluations conducted in career differed significantly for gender [χ^2 (1, n = 323) = 7.75, p < .005], knowledge of state regulations [χ^2 (1, n = 323) = 10.25, p < .001], number of competence to a make a will evaluations conducted in the past year [(M_0=0.07, SD_0=0.45; M_1=0.73, SD_1=2.33; t(308) = -4.223, p < .001], and number of competence to make a will evaluations conducted in career [(M_0=0.24, SD_0=1.50; M_1=11.04, SD_1=35.824; t(277) = -4.944, p < .001]. Thus, gender, knowledge of state regulations, number of competence to a make a will evaluations conducted in the past year, and number of competence to make a will evaluations conducted in career were used as covariates in the ANCOVA 2 analysis. Results showed that there was not a significant difference in rating of sufficiency of competence to make a will for the no experience group and experience group in career after controlling for the covariates [F(1, 300) = .96, p < .33, partial eta squared = .003].

Since the recoding described above led to unequal subgroups, number of forensic evaluations conducted in the past year and number of forensic evaluations in career were recoded a second way representing low experience versus high experience. Variables were recoded into 0s representing low experience and those coded as 1s representing high experience. This recoding was done both for the variable number of forensic evaluations in past year and the variable number of forensic evaluations in career. For the past year variable, there were 161 coded as 0 which would represent low experience with forensic evaluations, and 164 coded as 1 which would represent high experience with forensic

evaluations. The multiple regression analysis was rerun with the recoded variables, and the overall model was not significant [$F (10, 284) = 1.788$, $p < .062$]. Number of forensic evaluations conducted in the past year and number of forensic evaluations conducted in career were in opposite directions like the original regression; however, these variables did contribute significantly to the overall model.

To test the effects of the recoded variable of number of forensic evaluations conducted in the past year on the rating of sufficiency of competence to make a will, a one-way analysis of covariance (ANCOVA 3) was conducted. To assess for the existence of covariates, between groups tests were run on the demographic variables. The results indicated that the two groups in the recoded variable of number of forensic evaluations conducted in the past year differed significantly for gender [χ^2 (1, n = 324) = 4.98, $p < .026$], race [$p < .017$, Fisher's exact test], knowledge of state regulations [χ^2 (1, n = 324) = 5.10, $p < .024$], number of competence to make a will evaluations conducted in the past year[(M_0=0.41, SD_0=1.81; M_1=0.89, SD_1=2.48; $t(286) = -1.964$, $p < .05$], and number of competence to make a will evaluations conducted in career [(M_0=4.30, SD_0=13.86; M_1=14.55, SD_1=44.31; $t(192) = -2.798$, $p < .001$]. Thus, gender, race, knowledge of state regulations, number of competence to make a will evaluations in the past year, and number of competence to make a will evaluations conducted in career were used as covariates in the ANCOVA 3 analysis. Results showed that there was not a significant difference in rating of sufficiency of competence to make a will for the low experience group and high experience group in the past year after controlling for the covariates [$F(1, 299) = 1.40$, $p < .24$, partial eta squared = .005].

To test the effects of the recoded variable of number of forensic evaluations conducted in career on the rating of sufficiency of competence to make a will, a one-way analysis of covariance (ANCOVA 4) was conducted. To assess for the existence of covariates, between groups tests were run on the demographic variables. The results indicated that the two groups in the recoded variable of number of forensic evaluations conducted in career differed significantly for gender [χ^2 (1, n = 323) = 13.42, p < .001], race [p < .01 , Fisher's exact test], knowledge of state regulations [χ^2 (1, n = 323) = 18.66, p < .001], years of practice [(M_0=18.25, SD_0=10.92; M_1=24.59, SD_1=10.25; t(314) = -5.310, p < .001], and number of competence to make a will evaluations conducted in career [(M_0=4.56, SD_0=16.55; M_1=14.18, SD_1=43.26; t(211) = -2.644, p < .009]. Thus, gender, race, knowledge of state regulations, years of practice, and number of competence to make a will evaluations conducted in career were used as covariates in the ANCOVA 4 analysis. Results showed that there was not a significant difference in rating of sufficiency of competence to make a will for the low experience group and the high experience group in career after controlling for the covariates [F(1, 299) = .46, p < .50, partial eta squared = .002].

Additional Analyses

As part of the survey, participants were asked to rate a number of variables based on their importance in determining capacity to make a will. The 21 variables are:

- whether testator knows that he will die;
- whether testator knows that the will is a written document;
- whether testator knows that the will transfers property to his or her heirs;
- whether testator knows that the will takes effect after death;

- whether testator can express his or her understanding verbally;
- whether testator knows what important assets s/he owns;
- whether testator knows the financial value of his or her assets;
- whether testator knows the sentimental value of his or her assets;
- whether testator knows his or her immediate family members;
- whether testator knows whether his or her heirs are dead or alive;
- whether testator knows difference between family, significant others, and close friends versus others;
- whether testator understands that s/he is free to disinherit his or her heirs;
- whether testator is able to name heirs;
- whether testator is able to detail his or her relationship with his or her heirs;
- whether testator can articulate some basic plan for distribution of property;
- whether testator can articulate the consequences of his or her will;
- whether testator can explain his or her rationale of distribution;
- whether testator can justify if certain individuals are excluded from the will;
- whether testator knows who the executor (appointed representative) of the will is;
- whether testator's rationale for distribution is based in reality; and
- the size of the estate.

Correlations were conducted to gauge whether there were significant relationships among the variables and if so, the strength and direction of such relationships. If one wants to establish if the correlation is significant, then the sampling distribution must be normally distributed. With such a large sample, normality can be assumed. Tabachnick and Fidell (2007) point out that with reasonably large samples, skewness will not "make

a substantive difference in the analysis," and the risk of kurtosis is reduced with a large sample (greater than 200) (p. 80).

Out of a total of 210 correlations, 173 were significant (see Table 4). When a Bonferroni correction is applied, 107 of the significant correlations remain. All of the significant correlations suggested a positive relationship, and the strength of the relationship ranged from r = .11 to r = .65). Some of the highest correlations are noteworthy. There was a significant relationship between the importance of the testator knowing financial value of assets and the importance of the testator knowing what important assets are owned ($r = .65$, $p < .01$). The importance of the testator knowing immediate family members was significantly correlated with (1) the importance of the testator knowing whether heirs are dead or alive ($r = .58$, $p < .01$), (2) the importance of the testator knowing the difference between family, significant others, and close friends versus others ($r = .41$, $p < .01$), and (3) the importance of the testator being able to detail his or her relationship with his or her heirs ($r = .42$, $p < .01$). The importance of the testator being able to detail relationships with heirs was also correlated with (1) the importance of testator knowing the difference between family, significant others, and close friends versus others ($r = .44$, $p < .01$), (2) the importance of the testator being able to name heirs ($r = .48$, $p < .01$), (3) the importance of testator explaining a rationale of distribution ($r = .49$, $p < .01$), and (4) the importance of the testator justifying if certain individuals are excluded from the will ($r = .50$, $p < .01$).

Multiple single sample t-tests were used to assess whether the mean of each variable was significantly different from the scale midpoint (3). Participants rated 20 of the 21 variables as significantly different from the scale midpoint. Of those 20, 19

variables were rated as significantly higher than the scale midpoint while only one, the importance of size of the estate, was rated significantly lower.

Table 5 lists the results of the multiple t-tests. Results with the highest means are reported. The variable of importance of testator knowing that will transfers property to heirs and the variable of importance of testator knowing that will takes effect after death were rated as significantly higher than the scale midpoint [(M=4.65), $t(330) = 48.079$, $p < .001$, $d = 2.64$, large effect size; (M=4.57), $t(331) = 44.706$, $p < .001$, $d = 2.45$, large effect size, respectively]. Further, the participants rated the variables of importance of testator knowing heirs are dead or alive and importance of testator understanding that s/he is free to disinherit heirs as significantly higher than the midpoint of the scale [(M=4.44), $t(330) = 33.484$, $p < .001$, $d = 1.84$, large effect size; (M=4.39), $t(330) = 37.865$, $p < .001$, $d = 2.08$, large effect size, respectively]. Finally, the importance of testator knowing important assets owned was rated significantly higher than the scale midpoint [M=4.35); $t(329) = 36.999$, $p < .001$, $d = 2.04$, large effect size].

There was a concern about the number of planned contrasts and the introduction of familywise error. Often after making several comparisons, the chance of the results being significant increases greatly. To account for this possibility, the value of alpha was adjusted from .05 to .002 using the Bonferroni procedure. All of the p values remained significant even when using this Bonferroni-adjusted alpha level.

Discussion

Unlike other legal competencies, there is little empirical research in the area of testamentary competence, or competence to make a will. The current study attempted to identify the functional capacities associated with competence to make a will by surveying

practicing psychologists to obtain their views about the importance of specified domains. After a review of the legal and psychological literature, four main factors were identified that were common in many of the will statutes across jurisdictions. Additionally, other potential capacities were identified by further deconstructing the statutes and culling capacities from research on other legal competencies.

Knowing Will Transfers Property

The current study hypothesized that the testator knowing that a will transferred property would be associated with a higher rating of sufficiency of capacity to make a will. A main effect was observed for this factor. Psychologists rated the hypothesized testator, Ms. A., as more sufficient to make a will when she knew that the will transferred property. When she had this knowledge, she knew, for example, that her will would give her property to an heir of her choosing. It appears that understanding the nature of a will does play a role in determining whether someone has sufficient capacity to make a will. However, even though the difference between knowing and not knowing was statistically significant, there may not be as much practical significance, as the effect size was small. Moreover, both values fell below a score of 3, which meant that participants were rating it as lower than the midpoint on a 5-point scale reflecting level of importance. This main effect must be interpreted in light of the significant interactions found and will be discussed in later in this section.

Knowing Important Assets Owned

It was also hypothesized that the testator knowing important assets owned would be associated with a higher rating of sufficiency of capacity to make a will. A main effect was observed with this factor, as psychologists rated Ms. A as being more

sufficient in her capacities when she knew her important assets owned. Ms. A. was able to list important assets, like a house, a car, stocks, bonds, and a sizable savings account. In the vignettes where she possessed this ability, she was also able to give an accurate representation of their worth. While knowing important assets impinges on a judgment of whether someone has sufficient capacity to make a will, the values for this factor also fell below a score of 3. Although the difference was statistically significant, there may not be much practical significance, as the effect size was only medium. Moreover, this main effect must be interpreted in light of the significant interactions found and will be discussed in later in this section.

Knowing Heirs and Being Able to Detail Relationship

There was a main effect for the testator knowing his or her heirs and being able to detail the relationship, as hypothesized. When Ms. A. was able to recognize her offspring as an heir and identify the heir as her daughter, psychologists rated her sufficiency as higher than when she could not perform this task. The example in the vignette is an example of an "unnatural disposition," a disposition that excludes family members and leaves property to someone or something that would appear not to have much meaning to the testator or at least as much meaning to the testator as his or her natural heir. Ms. A. understood that she had a daughter as her natural heir, but chose to give her estate to a foundation. For this variable, there was statistical significance for the main effect, and the difference may be practically significant, as there was a large effect size. Also, the mean for knowing heirs and being able to detail the relationship was slightly higher than the value of 3. Further, this main effect must be interpreted in light of the significant interactions found and will be discussed in later in this section.

Being Able to Explain a Non-Delusional Rationale

A main effect was found if the testator was able to explain the plan for distribution in a non-delusional way. Psychologists rated Ms. A. as more sufficient to make a will if she was able to articulate a rationale plan for distribution. In the non-delusional rationale vignette, Ms. A. was able to cite specific, rational examples as to why she was not leaving her estate to her daughter, citing such things as strained relations, being subjected to derogatory remarks, and being required to engage in unwanted activities. The difference may not be practically significant even though the difference reached statistical significance because of the small effect size. Additionally, this main effect must be interpreted in light of the significant interactions found and will be discussed in later in this section.

Interaction of Knowing Will Transfers Property, Knowing Important Assets Owned, Knowing Heirs and Being Able to Detail Relationship, and Being Able to Explain a Non-Delusional Rationale

As hypothesized, there was an interaction among all four variables on ratings of sufficiency of capacity to make a will. The four variables related to the four elements (understanding nature of will, understanding nature and extent of property, knowing natural objects of bounty, and understanding the plan for distribution of assets) that were most often associated with competence to make a will after researching the relevant psycholegal literature. The results suggest that all four variables are important in determining an individual's competence to make a will. When all of these factors were in the affirmative, there was no interaction noted among the variables, yet the presence of all the factors in the affirmative yielded that highest mean score of possible permutations

of the variables. Sufficient capacity to make a will does appear to depend on the testator's knowledge that the will transfers property, the testator's knowledge of his important assets, and the presence of a non-delusional rationale. While testator's knowledge of his or her heirs is a part of the interaction, it does not appear to influence sufficiency of competence as much as the other factors when they are in the affirmative. Knowledge of heirs has a greater effect on the interaction when a testator has a delusional rationale, knows the will transfers property, and knows his or her important assets. It would appear from the results that the four factors differentially affect sufficiency of competence to make a will, and the independent importance of one depends on the presence or absence of another.

Based on the results from the sample, there can be some discussion about the relative importance of the four factors. The interpretation of the four-way interaction did little in the way of showing relative importance of the four factors; however, the main effects can be examined but have to be considered in light of the interaction. There was a large effect size for the factor of knowing heirs and being able to detail the relationship, and there was a medium effect size for the factor of knowing important assets owned. Both the factors of knowing the will transfers property and being able to explain a non-delusional rationale had a small effect size. Based on effect size, knowing heirs and being able to detail the relationship would appear to be the most important, and further in the interaction analysis this factor had differential effects depending on whether or not the other factors were in the affirmative. Nonetheless, caution must be taken to interpret any main effects when there is the presence of an exceedingly complex four-way interaction, which is not likely to be replicated.

Further, there was one two-way interaction between whether the testator knows that the will transfers property and whether the testator knows important assets owned. Results suggested that the interaction was between the variables when both of the variables were in the affirmative. The relationship between higher ratings of sufficiency of capacity to make a will and knowledge that the will transfers property depended on the testator knowing important assets owned. Similarly, the relationship between higher ratings of sufficiency of capacity to make a will and knowledge of important assets owned depended on the testator knowing that the will transferred property. Additionally, the results showed the remaining interactions that were not significant.

Psychologist Demographic Characteristics

The results partially supported the hypothesis that demographic characteristics would be related to ratings of sufficiency of capacity to make a will. However, only years of practice and psychologists' experience with forensic evaluations contributed significantly this finding. Psychologists who have greater years of practice and more practice conducting forensic evaluations in a given year were more likely to rate a testator as having sufficient capacity to make a will, but psychologists with more experience in conducting forensic evaluations over his or her career were less likely to rate a testator as having sufficient capacity to make a will. There is an interesting but confusing finding--a greater number of forensic evaluations conducted in a career would lead psychologists to rate the testator in the vignette as have less sufficient capacity, but greater number of evaluations done in a year was associated with higher ratings. It should not make a difference how experience is conceptualized; each conceptualization should yield the same results, whether both resulted in an increase in the rating or a decrease in the rating.

Here, though, the two conceptualizations lead to differing and opposite effects. Perhaps, though, evaluation experience of psychologists is better operationalized by number of evaluations done in a career rather than measured by year. This conception may account for the difference. Another possible reason for this finding may be that psychologists with more experience overall in conducting forensic evaluations felt that there was not enough information in the vignette. Psychologists usually have much more additional information, including records and collateral information, at their disposal when formulating an opinion on a legal competency. While the vignette attempted to closely approximate the type of information to which a psychologist would have access, the vignette did not match the scope and the breadth of information usually afforded to psychologists.

Demographic characteristics of the raters account for a very small proportion of why sufficiency of capacity to make a will varies. Only 7.6% of the overall variation in ratings of sufficiency of capacity to make a will was accounted for by the predictor variables (race, gender, years of practice, number of forensic evaluations conducted in past year and in career, number of competence to make a will evaluations conducted in past year and in career, knowledge of state regulations, and work location). The results suggest that while these variables had a significant effect on the sufficiency rating, there probably was not a practical effect.

Since similar conceptualizations of forensic experience led to differing and opposite results as described above, we decided to rerun the regression analysis with variables that had been transformed. When forensic experience, whether recoded as never done an evaluation versus any experience whatsoever or low experience versus

high experience, was introduced into the regression model, the overall model was not significant.

Additionally, comparing the subgroups (none versus any experience and low versus high experience) on the same variables analyzed from the entire sample did not yield any significant results. While for some demographic variables (gender, knowledge of state regulations, number of competence to make a will evaluations conducted in past year and in career), there were significant differences between the no experience subgroup and any experience subgroup in the past year and in the career, there was no significance difference between the subgroups in the ratings of sufficiency of competence to make a will, the main outcome variable. Similarly, while for some demographic variables (gender, race, knowledge of state regulations, years of practice, number of competence to make a will evaluations conducted in past year and in career), there were significant differences between the low experience group and high experience group. However, there was also no significance difference between those subgroups in the ratings of sufficiency of competence to make a will. While the assumptions did not appear to be violated in the regression analysis, perhaps the distribution of responses for the forensic experience variables were skewed and led to this odd finding.

Other Potential Capacities

Additional capacities that are implicated in competence to make will according to the literature were studied. These capacities were linked in some way to the four common elements that make up testamentary competence – understanding the nature of the will, understanding the nature and extent of property, knowing natural objects of one's bounty, and understanding the plan for distribution of assets. Psychologists were

asked to rate the importance of the variables in determining a testator's capacity to make a will.

Among the 21 variables tested for their importance in a correlation matrix, 82% of those correlations showed a statistically significant effect. The results of the correlations gave an idea of not only which variables were important to psychologists but also which variables were important relative to each other. Higher ratings of importance for a testator knowing the financial value of his assets were associated with higher ratings of importance for a testator knowing important assets owned. These variables are related to understanding the nature and extent of property. Higher ratings of importance of knowing family members were associated with higher ratings of importance of the testator knowing whether heirs are dead or alive, higher ratings of importance of the testator knowing the difference between close relations and other people, and higher ratings of importance of being able to detail relationships with heirs. These variables are linked to the element of knowing natural objects of one's bounty. Higher ratings of importance of being able to detail relationships with heirs was also associated higher ratings of importance of the testator knowing the difference between close relations and other people, higher ratings of importance of testator being able to name heirs, higher ratings of importance of testator explaining a rationale for distribution, and higher ratings of importance of testator justifying if certain individuals are excluded from the will. These variables span two elements – knowing natural objects of one's bounty and understanding the plan for distribution of assets; however, these two elements would need to be interrelated as the testator would need to know the natural objects of one's bounty to be able to cogently understand the plan for distribution of assets. Higher

ratings of importance of the testator's rationale being based in reality was associated with higher ratings of importance of testator explaining a rationale for distribution, and higher ratings of importance of testator justifying if certain individuals are excluded from the will, and these variables are connected to the element of understanding the plan for distribution of assets. Finally, higher ratings of importance of the testator articulating the consequences of the will was associated with higher ratings of importance of the testator articulating some basic plan for distribution of property, and these variables are also linked to the element of understanding the plan for distribution. It would appear from the results that variables that were subsumed within a particular element of testamentary capacity were seen as being highly correlated with each other.

Since the area of testamentary competence lacks empirical research, it was important to find out what variables could be retained for future research. Most of the variables, 20 out of 21, were rated as significantly different than the midpoint of the scale. Testator's knowledge of the sentimental value of his or her assets was not rated significantly different from the midpoint of the scale. Sentimentality was not mentioned in the review of the literature as a factor that is important in determining capacity to make a will. However, the other factors were mentioned in the literature as potentially important variables of interest. Out of the 19 remaining factors, only one, size of estate, was rated as significantly lower than the scale midpoint. This result could reflect the conflicting case law as to relevance of size of the estate. As noted earlier, some courts have found that size is not important to understanding the nature and extent of property. Other courts, though, have posited that there is a proportional relationship between the amount of knowledge required and the size of the estate.

Limitations

This study was designed to define legally relevant functional abilities that encompass competence to make a will. This research was a beginning step in empirically defining these functional capacities by reviewing the legal and psychological literature followed by surveying professionals whose opinion is relevant to the issue of competence to make a will. While an empirically supported method of gathering relevant psycholegal capacities (Douglas et al., 2003) was used, there were limitations in this study that should be addressed. First, there is a potential limitation on the generalizability of the study. The methodology attempted to capture psychologists who were familiar with aging individuals and forensic assessment. There is an assumption that our sample is representative of this population. Ideally, our sample would have included psychologists who were interested in aging and forensic psychology; however, the number produced from that overlap was much too small to achieve any kind of appreciable power. In order to have a sufficiently large population from which to sample, the selection criteria were made more expansive. This may have resulted in sampling some individuals who were neither experienced nor specialized in this area.

Further, there could be a limitation related to response bias, as psychologists who responded to an internet survey may be systematically different than those who did not respond. Attempts were made to make the sample as representative as possible. The sample was drawn from a national pool of psychologists and was a large sample size. Participants varied by race, and the breakdown of ethnicity was consistent with the demographic makeup of the American Psychological Association. The sample probably did not perfectly match the population, but this was one of the first empirical attempts at

defining functional capacities. Certainly this study needs replicating. Given the response rate of 29%, it is possible that sample did not represent the larger population.

Another limitation of the current study is that we did not include any other professional groups, like attorneys or judges, whose opinion would be relevant to testamentary competence. Inclusion of these individuals would have raised the required sample size considerably and impracticably for a study of the current magnitude, thus due to practical considerations, these individuals were excluded. However, Douglas et al. (2003) point out that in order to develop an empirically sound forensic assessment instrument, it is necessary to include experts from both the psychological and legal disciplines. This study serves as a first step in a multi-step process that would involve surveying mental health professionals, legal professionals, such as trust and estate lawyers and probate judges, or a combination of both.

The use of vignettes may also limit the results of this study. Vignettes are usually time-limited, brief, and easy for the respondent to use. This ease of use limits the amount of information that can be included while keeping the vignettes short. Ratings could have been affected by the limited detail in the vignettes as well as the hypothetical nature of the vignettes themselves. Information that psychologists generally obtain to make a decision about an individual's competence is much more exhaustive than what could have been provided in a survey. The vignettes incorporated factors that were identified by research and scholarship as relevant. However, these factors are by no means an exhaustive list. For example, cognitive deficits, particularly those related to declining age, can impinge on a finding of competence to make will. The current study did not

focus on that particular variable, but nonetheless it could be an important aspect of this kind of competence.

Further, testamentary competence does not have a single unitary legal standard, as do some other legal competencies (e.g., competence to stand trial). Testamentary competence is determined by state statute and state case law. However, in the course of legal research for the literature review, commonalities among state law were found. However, it is possible that the weight given to the various factors tested in the survey could have varied by jurisdiction. Accordingly, there could be some limitations as to whether the findings would uniformly apply in all jurisdictions. Nonetheless, the sample encompassed most of the states, save for six states, so any systematic differences would have been randomly distributed across the sample.

Finally, a web based survey was utilized in this study. This type of survey is relatively novel. Large and diverse samples can be attained by virtue of an online survey rather than relying on a sample of convenience. A potential problem exists for conducting online surveys when "researchers lose control over the environment in which the research is conducted" (Kraut et al., 2004, p. 108), and the authors suggest that researchers "contact the minimal number of potential subjects appropriate to their research goals" (p. 114). Efforts were made to control the environment by soliciting participation from a select membership rather than all psychologists with interest in aging or forensic psychology who have access to the internet, as control would have been impossible. Limitations of online survey have implicated the acceptability of the internet as a method of data collection and representativeness of the sample. Research has shown the internet "remains unequally distributed throughout the U.S. population, … and it

remains the responsibility of the researcher to ensure that all members of the defined population have equal access to the technology needed to complete the survey" (Granello & Wheaton, 2004, p. 389). The use of the internet as data conduit could have systematically affected the sample; however, the sample of interest seemingly had access to the internet and was comfortable using the internet as they provided an email address. Further, response rates can be harder to determine with an internet sample if access to the survey is unlimited in the number of individuals who can access the survey. This difficulty can be ameliorated by the use of a "targeted group" and "a specific URL" (Granello & Wheaton, p. 390). Thus, for the current study, the numbers of participants who were contacted and who responded were tracked. Although internet surveys are relatively new, they have been shown to have greater generalizability and have similar conclusions to laboratory studies (Barchard & Williams, 2008).

Implications

Testamentary capacity has not been the subject of much empirical research. The results from the current study can inform the evolving area of defining the functional abilities within the area of testamentary competence. While there is no national legal standard on testamentary competence, state statute has controlled this area, and across jurisdictions states consider similar elements. However, prior to this study, there was not an evident consensus about the functional demands necessary for sufficient competency to make a will. Assuming the results of the current study are generalizable to the general population of psychologists engaged in determinations of testamentary competence, it appears that four elements (understanding the nature of the will, understanding the nature and extent of property, knowing natural objects of one's bounty, and understanding the

plan for distribution of assets) are seen by psychologists as essential in determining sufficiency of competence to make a will. There results seem to indicate that these elements can be divided up into further capacities, which psychologists also found important in making a decision on testamentary competence.

The current study added to the testamentary competence literature in several important ways. First, it is one of the few studies to attempt to define the functional capacities of competence to make a will. Second, the survey used in the study was constructed using a conceptual model based on research from the legal and psychological literature. Further, some of the factors were analogized from other legal competencies, such as competence to consent to treatment. Third, the study tested a sample of individuals from a population of experts relevant to the competence of interest. Finally, the findings have import for prospective assessments of testamentary competence in the future.

While retrospective assessment of testamentary competence is the most common way of determining competence (Regan & Gordon, 1997), present-state or prospective evaluation can often provide superior evidence (Champine, 2006). Present-state evaluation adds a facet lost in retrospective assessment, the testator. The testator would be available for interview, and the functional demands can be observed and tested rather than reconstructed, as they are in a retrospective assessment. However, there is currently no forensic assessment instrument that is available to help inform clinicians' decisions about testamentary competence. This study's attempt to understand these functional abilities presents a first step in the development of such a tool. In the current study, the sample of psychologists reported that all four factors were important, even though the

majority of those surveyed did not indicate that they knew their states' regulations surrounding testamentary capacity. The identification of these four factors is an important step in developing specialized tools. The development of a forensic assessment instrument specific to testamentary competence can inform legal policy and practice. Behavioral scientists develop tools to inform and guide decision-makers in the legal system. Probate judges would be the decision-makers in will contests, and a forensic assessment instrument would provide information to judges as they make their ultimate decision on whether a testator is competent. In the next section, future research undertaking the development of this tool will be discussed. As the population in the United States continues to age, the issue of testamentary competence will be increasingly raised.

Future Research

The results of this study could be used in various ways. First, a number of variables derived from the psycholegal literature were tested. Many of the variables were identified by psychologists as being important or extremely important in assessing a testator's capacities to make a will and being significantly greater than midpoint of scale. Prior to the current study, these variables had not been empirically tested, and replication is necessary. The findings that these 19 variables are important is likely due to a real, non-chance effect; however, to bolster this finding replication would help to see if there are other factors other than the independent variables that are operating. Further, Kazdin (2003) notes that "replications early in the development of an area of research are particularly important as the bedrock of theory and empirical phenomena are established" (p. 494).

Second, future research could focus on the next steps in developing a forensic assessment instrument for use in cases concerning testamentary capacity. Developing a well constructed forensic assessment involves a number of steps. The current study undertook the first steps: identification of the legal question and the relevant forensic capacities and operationalization of the variables to be measured (including the forensic capacities) (Heilbrun, Rogers, & Otto, 2002). There are a number of remaining steps, including piloting of the instrument to obtain information on its practicality and psychometric properties, full derivation study to clarify information obtained during the piloting step, cross-validation to provide independent information on the instrument, and the development of a manual describing the steps taken, research conducted, and addressing questions of administration and interpretation (Heilbrun, Rogers, & Otto). However, before those latter steps can be taken, it would be wise to replicate the work done in the study and add other populations whose knowledge would be relevant to competence to make will. This would include exploring the opinions of not only mental health professionals but also the opinions of legal professionals, such as trusts and estate lawyers and probate judges, or a combination of legal and mental health professionals.

There was an idiosyncratic finding in the conceptualization of forensic experience which led to differing and opposite effects in the results. Future research may be able focus on and develop further the idea of subgroups of forensic experience and how various subgroups rate sufficiency of competence to make a will. While this was an interesting finding in the current study, replication and further study would be necessary to see if this is a viable avenue for future research.

Finally, future research can focus on using a longer vignette that may better approximate the breadth of materials received and used by psychologists to make determinations of testamentary competence. The current vignette was one page, and future studies might want to expand upon the vignette providing more information to the participants. Even though it can be argued that some individuals would not response to a lengthy survey, some may be willing to consider additional information. Further information that could be provided to participants could include variables related to cognitive deficits, and a study focusing on the effect of cognitive deficits on testamentary capacity would be another avenue for future research.

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Table 1
Distribution of Participants by Jurisdiction

State	N
Alabama	4
Alaska	1
Arizona	6
Arkansas	1
California	42
Colorado	3
Connecticut	3
Delaware	0
District of Columbia	1
Florida	21
Georgia	13
Hawaii	3
Idaho	1
Illinois	12
Indiana	2
Iowa	3
Kansas	3

Kentucky	3
Louisiana	0
Maine	5
Maryland	7
Massachusetts	20
Michigan	8
Minnesota	6
Mississippi	0
Missouri	6
Montana	1
Nebraska	1
Nevada	4
New Hampshire	4
New Jersey	6
New Mexico	2
New York	26
North Carolina	14
North Dakota	0
Ohio	14
Oklahoma	3
Oregon	3
Pennsylvania	14
Rhode Island	1

South Carolina	0
South Dakota	1
Tennessee	4
Texas	20
Utah	0
Vermont	1
Virginia	8
Washington	7
West Virginia	2
Wisconsin	9
Wyoming	2
Puerto Rico	3
Canada	5
Do not practice	11
Missing	3

Table 2
Analysis of Variance for Ratings of Sufficiency of Competence to Make a Will

Source	df	F	Partial η^2	p
Transfers property (TP)	1	6.066	.019	.014*
Important assets (IA)	1	31.466	.091	.001**
Heirs & Relationship (HR)	1	80.053	.203	.001**
Non-delusional rationale (NDR)	1	11.508	.035	.001**
TP X IA	1	7.148	.022	.008**
TP X HR	1	.003	.000	.960
TP X NDR	1	3.167	.010	.076
IA X HR	1	.389	.001	.534
IA X NDR	1	.875	.003	.350
HR X NDR	1	.855	.003	.356
TP X IA X HR	1	.016	.000	.900
TP X IA X NDR	1	.001	.000	.978
TP X HR X NDR	1	.001	.000	.970
IA X HR X NDR	1	1.953	.006	.163
TR X IA X HR X NDR	1	4.547	.014	.034*
error	315	(.620)		

Note: Values enclosed in parenthesis represent mean square errors.
*p<.05
**p<.01

Table 3
Multiple Regression Analysis for Variable Predicting Sufficiency of Competence to Make a Will

Variable	B	SE B	β
Gender	.163	.116	.088
Years of Practice	.020	.006	.239*
Number of Forensic Evaluations in Past Year	.002	.001	.286*
Number of Forensic Evaluations in Career	.000	.000	-.245*
Number of Competence to Make Will Evaluations in Past Year	-.038	.034	-.093
Number of Competence to Make Will Evaluations in Career	.000	.003	-.005
Familiarity with State Will Regulations	.089	.121	.048
Race	-.016	.181	-.005
Urban v. Not	-.131	.166	-.071
Suburban v. Not	-.078	.178	-.039

Note: $R^2 = .076$ ($p < .01$)
*$p < .01$

Table 4

Correlation Matrix of Ratings of Factors Important in Determining Capacity

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
1	1.0																				
2	.207**	1.0																			
3	.082	.177*	1.0																		
4	.140*	.372**	.263**	1.0																	
5	.006	.086	.007	-.050	1.0																
6	.077	.097	.165**	.159**	.124*	1.0															
7	.151**	.144**	.059	.111*	.183**	.651**	1.0														
8	.187**	.176**	.120*	.161**	.310**	.256**	.332**	1.0													
9	.139*	.118*	.086	.048	.160**	.196**	.197**	.250**	1.0												
10	.165**	.140*	.104	.135*	.089	.157**	.216**	.258**	.584**	1.0											
11	.233**	.171**	.086	.119*	.159**	.088	.140*	.253**	.405**	.326**	1.0										
12	.106	.228**	.108*	.357**	.063	.134*	.190**	.187**	.133*	.215**	.315**	1.0									
13	.148**	.173**	.085	.159**	.231**	.298**	.288**	.232**	.247**	.351**	.277**	.335**	1.0								
14	.117*	.141*	.089	.160**	.266**	.136*	.195**	.347**	.418**	.381**	.435**	.315**	.479**	1.0							
15	.013	.047	.126*	.136*	.146**	.239**	.284**	.175**	.148**	.210**	.152**	.243**	.338**	.316**	1.0						
16	.061	.124*	.096	.057	.183**	.251**	.331**	.211**	165**	.173**	.143**	.230**	.320**	.295**	.435**	1.0					
17	.115*	.181**	.039	.045	.270**	.285**	.333**	.357**	.227**	.229**	.307**	.193**	.330**	.492**	.309**	.365**	1.0				
18	.183**	.212**	.106	.017	313**	.220**	.267**	.294**	.258**	.256**	.366**	.185**	.274**	.496**	.224**	.247**	.653**	1.0			
19	-.001	.185**	.041	.157**	.172**	.287**	.303**	.266**	.203**	.240**	.104	.242**	.307**	.196**	.310**	.243**	.247**	.155**	1.0		
20	.110*	.081	.064	.077	.214**	.157**	.190**	.246**	.203**	.258**	.255**	.133*	.347**	.378**	.212**	.315**	.514**	.456**	.219**	1.0	
21	.160**	.150**	.050	.055	.173**	.145**	.208**	.237**	.192**	.228**	.238**	.052	.154**	.279**	.140*	.042	.282**	.282**	.150**	.123*	1.0

** Correlation sig. at 0.01 level (2-tailed), * Correlation sig. at 0.05 level (2-tailed)

1 = Whether testator knows that he will die

2 = Whether testator knows that the will is a written document

3 = Whether testator knows that the will transfers property to his or her heirs

4 = Whether testator knows that the will takes effect after death

5 = Whether testator can express his or her understanding verbally

6 = Whether testator knows what important assets s/he owns

7 = Whether testator knows the financial value of his or her assets

8 = Whether testator knows the sentimental value of his or her assets

9 = Whether testator knows his or her immediate family members

10 = Whether testator knows whether his or her heirs are dead or alive

11 = Whether testator knows difference between family, significance others, and close friends versus others

12 = Whether testator understands that s/he is free to disinherit his or her heirs

13 = Whether testator is able to name heirs

14 = Whether testator is able to detail his or her relationship with his or her heirs

15 = Whether testator can articulate some basic plan for distribution of property

16 =Whether testator can articulate the consequences of his or her will

17 = Whether testator can explain his or her rationale of distribution

18 = Whether testator can justify if certain individuals are excluded from the will

19 = Whether testator knows who the executor (appointed representative) of the will is

20 = Whether testator's rationale for distribution is based in reality

21 = The size of the estate

Table 5
Single Sample t-test Ratings of Importance in Determining Competence to Make a Will

Source	Mean	df	t	d	p
Knows that s/he will die	3.25	329	3.570	.20	.001*
Knows that will is written document	4.09	330	22.856	1.25	.001*
Knows that will transfers property to heirs	4.65	330	48.079	2.64	.001*
Knows that will takes effect after death	4.57	331	44.706	2.45	.001*
Can express his or her understanding verbally	3.87	330	13.785	.76	.001*
Knows what important assets s/he owns	4.35	329	36.999	2.04	.001*
Knows financial values of his or her assets	3.96	331	23.207	1.27	.001*
Knows sentimental value of his or her assets	3.08	330	1.340	-----	.181
Knows his or her immediate family members	4.31	331	25.817	1.42	.001*
Knows whether his or her heirs are dead or alive	4.44	330	33.484	1.84	.001*
Knows difference between family, significant others, and close friends versus others	4.11	330	23.292	1.28	.001*
Understands s/he is free to disinherit his or her heirs	4.39	330	37.865	2.08	.001*

Able to name heirs	4.18	330	26.647	1.46	.001*
Able to detail relationship with heirs	3.83	331	16.474	.90	.001*
Can articulate some basic plan for distribution	4.15	330	27.119	1.49	.001*
Can articulate consequences of the will	4.19	331	24.925	1.37	.001*
Can explain rationale for distribution	3.70	331	12.935	.71	.001*
Can justify if certain individuals are excluded	3.37	329	5.919	.33	.001*
Knows who executor (appointed representative) of the will is	4.02	330	19.431	1.07	.001*
Rationale for distribution is based in reality	4.28	330	25.352	1.39	.001*
Size of the estate	2.46	330	-8.361	-.46	.001**

*Significantly higher than midpoint of scale, $p < .001$
**Significantly lower than the midpoint of scale, $p < .001$

Figure 1- *Interaction among Knowing Will Transfers Property, Knowing Important Assets Owned, Being Able to Name Heirs and Detail Relationship, and Being Able to Explain a Non-delusional Rationale*

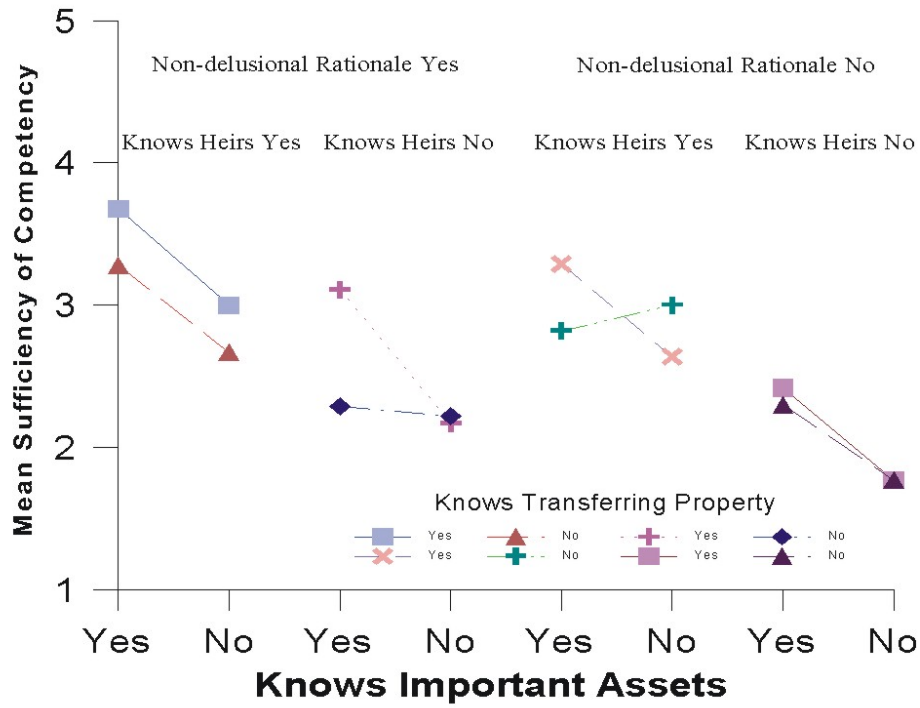


Figure 2 – *Interaction between Knowing Will Transfers Property and Knowing Important Assets Owned*

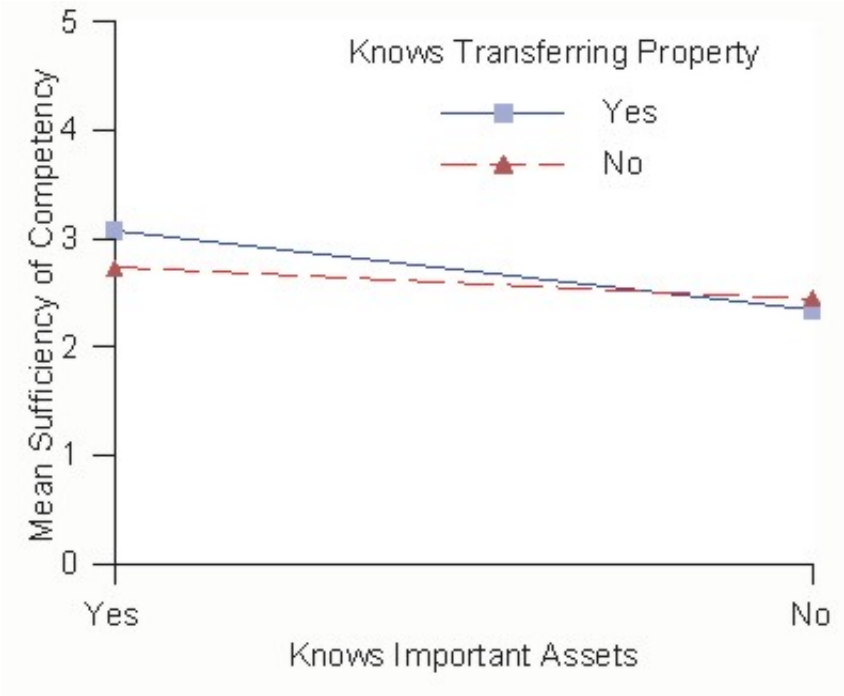


Figure 3 – *Scatterplot of Multiple Regression*

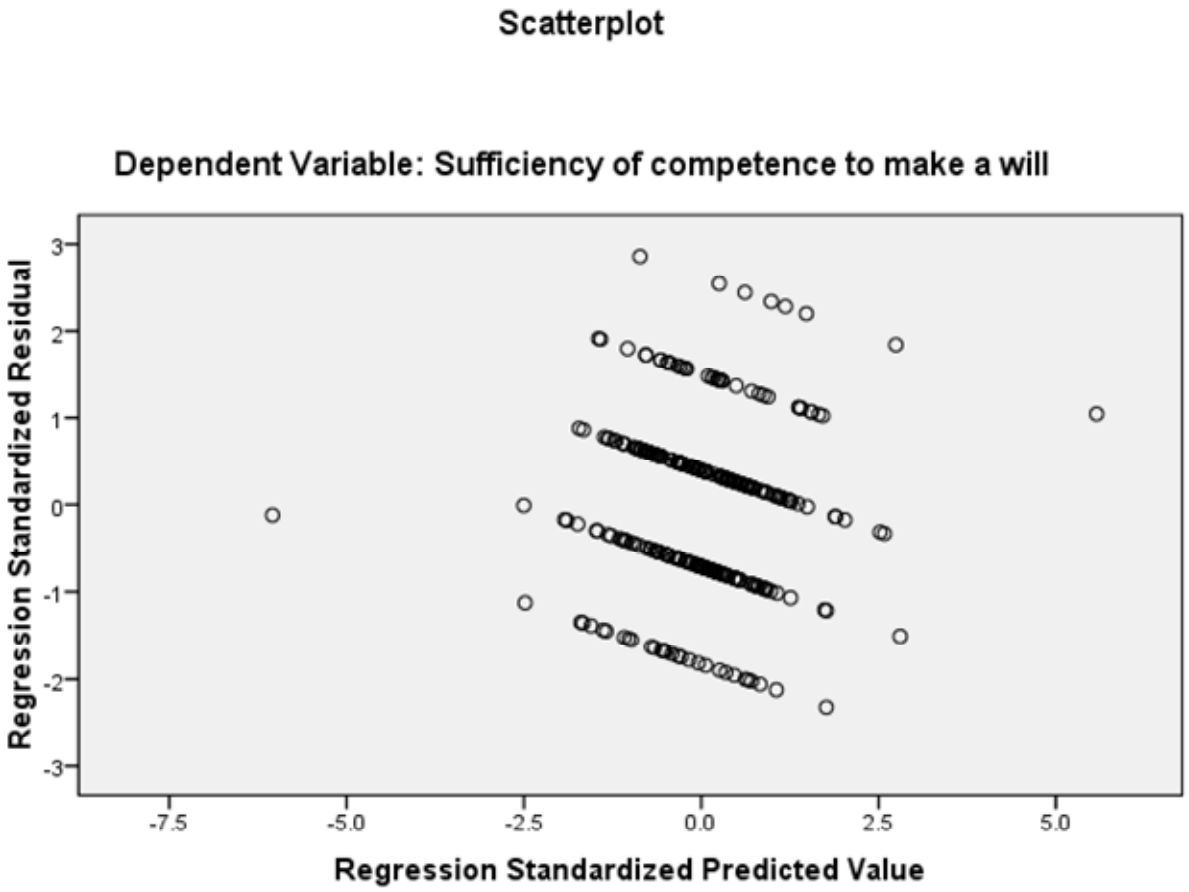
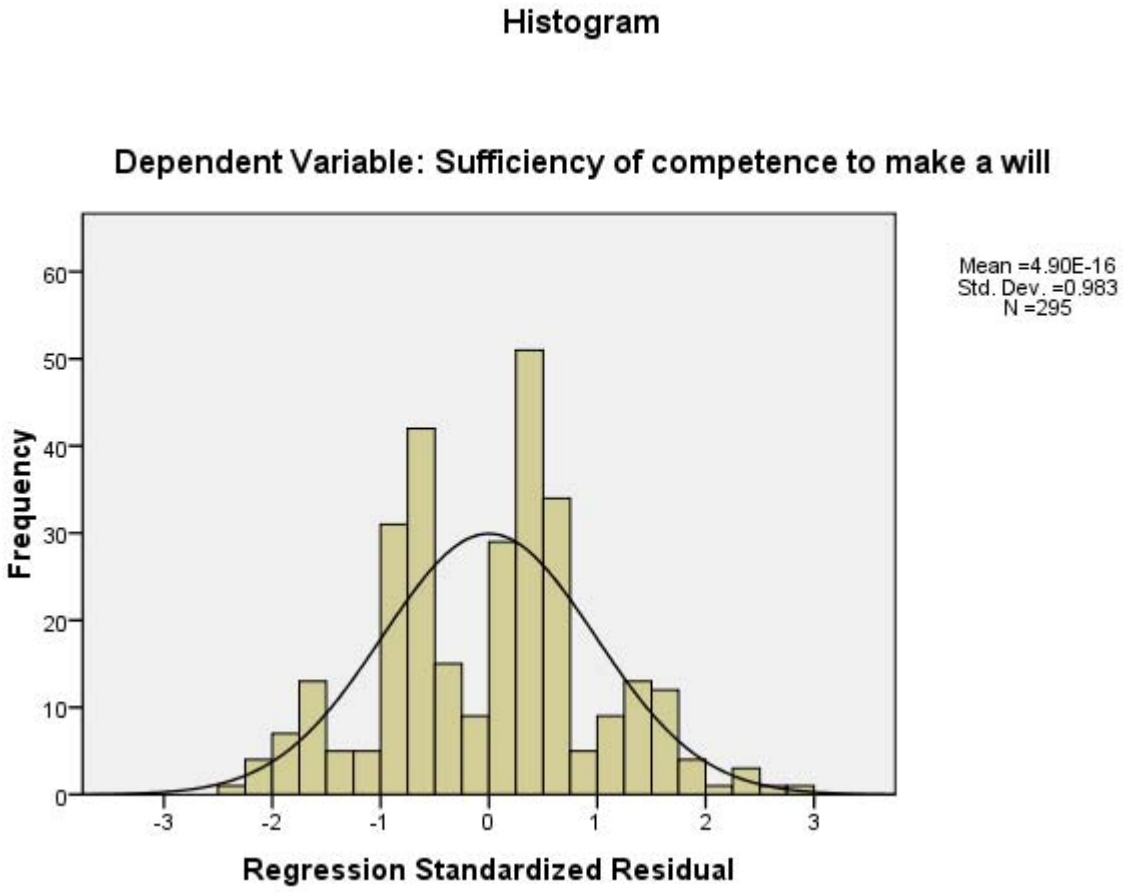


Figure 4 – *Histogram of Multiple Regression*



Appendix A: Email Communication to Psychologists from the American Psychological Association

Initial Email Communication to Psychologists

Dear Psychological Professional:

I am a graduate student in the Law and Psychology Program at Drexel University conducting a doctoral dissertation in the area of competence to make a will. As part of this study, I am seeking responses from psychologists with interests in aging or forensic psychology.

The present survey has been carefully piloted and takes no more than 10 minutes but closer to 5 minutes for most people. It is fully anonymous and can be accessed through the following link:

http://www.surveymethods.com/EndUser.aspx?

If you interested in receiving a summary of the results of this study, you can request this at the end of the survey. Thank you for considering participation in this important area in which little empirical research is now available.

Sincerely,

Christina M. Finello
Ph.D. Degree Candidate
cmf29@drexel.edu

Two Week Follow-up Email Communication to Psychologists

Dear Psychological Professional:

This email is a follow up to a request for survey participation for my doctoral dissertation that was sent to you on November 21, 2008. If you have already completed the survey, please accept my thanks and let me know if you would like a summary of the results.

If you have not completed the survey, please consider this last request to participate (I won't bother you further). If you would like to participate, you may do so by clicking on the following link: http://www.surveymethods.com/EndUser.aspx?

Sincerely,
Christina M. Finello
Ph.D. Degree Candidate
cmf29@drexel.edu

Appendix B: Vignettes

Please read the following facts, and then answer the question that follows:

A

Ms. A's lawyer has requested and you agreed to evaluate Ms. A for her competence to make a will. Ms. A is 80-years-old and has one child, a daughter who is 50-years-old. During the evaluation, you learn that Ms. A plans to leave only one dollar of a sizable estate to her daughter and the rest to the Save the Children Foundation. She explained that she had not gotten along well with her daughter, that while living with her daughter's family, she had been required to do things which she did not want to do, that her daughter's husband made a derogatory remark regarding Ms. A's ethnicity, and that her daughter's family was lacking in religious spirit. Ms. A also stated that she (Ms. A) had failed to contribute enough in support of the Save the Children Foundation. Ms. A told you that she wants to write a will so that she can give her property to the Save the Children Foundation. Her estate is comprised of a house, a car, stocks, bonds, and a sizable savings account. Ms. A provided you with a list of those items and an accurate representation of their worth.

B

Ms. A's lawyer has requested and you agreed to evaluate Ms. A for her competence to make a will. Ms. A is 80-years-old and has one child, a daughter who is 50-years-old. During the evaluation, you learn that Ms. A plans to leave only one dollar of a sizable estate to her daughter and the rest to the Save the Children Foundation. She explained that she had not gotten along well with her daughter and that her daughter had tried to kill

Ms. A by putting glass in her pudding. Ms. A also stated that she (Ms. A) had failed to contribute enough in support of the Save the Children Foundation. Independent evidence discloses that her daughter had prepared the pudding with the glass in it, but the glass was there accidentally. Furthermore, Ms. A had been assured by many people that such was the case, but she persisted in believing that her daughter wanted to harm her. Ms. A told you that she wants to write a will so that she can give her property to the Save the Children Foundation. Her estate is comprised of a house, a car, stocks, bonds, and a sizable savings account. Ms. A provided you with a list of those items and an accurate representation of their worth.

C

Ms. A's lawyer has requested and you agreed to evaluate Ms. A for her competence to make a will. Ms. A is 80-years-old and has one child, a daughter who is 50-years-old. During the evaluation, you learn that Ms. A plans to leave her entire estate to the Save the Children Foundation. When asked whether she has any heirs, she explained that "the nice people at the home take care of me." Ms. A also stated that she (Ms. A) had failed to contribute enough in support of the Save the Children Foundation. Ms. A told you that she wants to write a will so that she can give her property to the Save the Children Foundation. Her estate is comprised of a house, a car, stocks, bonds, and a sizable savings account. Ms. A provided you with a list of those items and an accurate representation of their worth.

D

Ms. A's lawyer has requested and you agreed to evaluate Ms. A for her competence to make a will. Ms. A is 80-years-old and has one child, a daughter who is 50-years-old.

During the evaluation, you learn that Ms. A plans to leave her entire estate to the Save the Children Foundation. When asked whether she has any heirs, she explained that "the nice people at the home take care of me." Ms. A also stated that God sent her a message over the radio telling her to leave all of her money to the Save the Children Foundation. Ms. A told you that she wants to write a will so that she can give her property to the Save the Children Foundation. Her estate is comprised of a house, a car, stocks, bonds, and a sizable savings account. Ms. A provided you with a list of those items and an accurate representation of their worth.

E

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F

Ms. A's lawyer has requested and you agreed to evaluate Ms. A for her competence to make a will. Ms. A is 80-years-old and has one child, a daughter who is 50-years-old. During the evaluation, you learn that Ms. A plans to leave only one dollar of a sizable estate to her daughter and the rest to the Save the Children Foundation. She explained that she had not gotten along well with her daughter and that her daughter had tried to kill Ms. A by putting glass in her pudding. Ms. A also stated that she (Ms. A) had failed to contribute enough in support of the Save the Children Foundation. Independent evidence discloses that her daughter had prepared the pudding with the glass in it, but the glass was there accidentally. Furthermore, Ms. A had been assured by many people that such was the case, but she persisted in believing that her daughter wanted to harm her. Ms. A told you that she wants to write a will so that she can give her property to the Save the Children Foundation. Her estate is comprised of a house, a car, stocks, bonds, and a sizable savings account. When asked the value of her estate, Ms. A reported that she "must have about $10,000 or so."

G

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the Children Foundation. Her estate is comprised of a house, a car, stocks, bonds, and a sizable savings account. When asked the value of her estate, Ms. A reported that she "must have about $10,000 or so."

H

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I

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failed to contribute enough in support of the Save the Children Foundation. Ms. A told you that she wants to write a will and asks you if you can also find a way to make sure the Save the Children Foundation gets her property. When asked what she expects her will to do, she stated that she wants to make sure she is okay after she dies. Her estate is comprised of a house, a car, stocks, bonds, and a sizable savings account. Ms. A provided you with a list of those items and an accurate representation of their worth.

J

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K

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L

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the Save the Children Foundation gets her property. When asked what she expects her will to do, she stated that she wants to make sure she is okay after she dies. Her estate is comprised of a house, a car, stocks, bonds, and a sizable savings account. When asked the value of her estate, Ms. A reported that she "must have about $10,000 or so."

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kill Ms. A by putting glass in her pudding. Ms. A also stated that she (Ms. A) had failed to contribute enough in support of the Save the Children Foundation. Independent evidence discloses that her daughter had prepared the pudding with the glass in it, but the glass was there accidentally. Furthermore, Ms. A had been assured by many people that such was the case, but she persisted in believing that her daughter wanted to harm her. Ms. A told you that she wants to write a will and asks you if you can also find a way to make sure the Save the Children Foundation gets her property. When asked what she expects her will to do, she stated that she wants to make sure she is okay after she dies. Her estate is comprised of a house, a car, stocks, bonds, and a sizable savings account. When asked the value of her estate, Ms. A reported that she "must have about $10,000 or so."

O

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After each version of the Vignette, the following question will be asked. In this case, how sufficient would you rate Ms. A's capacities to make a will? (please select one)

1	2	3	4	5
Entirely Insufficient	Largely Insufficient	Mixed Evidence	Largely Sufficient	Entirely Sufficient

Appendix C: Survey Questionnaire

How important do you consider each of the following in assessing someone's capacities to make a will? (The "testator" is the person making the will.)

1) Whether the testator knows that he will die.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

2) Whether the testator knows that the will is a written document.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

3) Whether the testator knows that the will transfers property to his or her heirs.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

4) Whether the testator knows that the will takes effect after death.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

5) Whether the testator can express his or her understanding verbally.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

6) Whether the testator knows what important assets s/he owns.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

7) Whether the testator knows the financial values of his or her assets.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

8) Whether the testator knows the sentimental value of his or her assets.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

9) Whether the testator knows his immediate family members.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

10) Whether the testator knows whether his or her heirs are dead or alive.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

11) Whether the testator knows the difference between family, significant others, and close friends versus others.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

12) Whether the testator understands that s/he is free to disinherit his or her heirs.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

13) Whether the testator is able to name heirs.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

14) Whether the testator is able to detail his or her relationship with his or her heirs.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

15) Whether the testator can articulate some basic plan for distribution of property.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

16) Whether the testator can articulate the consequences of his or her will.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

17) Whether the testator can explain his or her rationale of distribution.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

18) Whether the testator can justify if certain individuals are excluded from the will.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

19) Whether the testator knows who the executor (appointed representative) of the will is.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

20) Whether the testator's rationale for distribution is based in reality.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

21) The size of the estate.

1	2	3	4	5
Extremely Unimportant	Unimportant	Between Unimportant & Important	Important	Extremely Important

Appendix D: Demographic Survey

1. **Your Gender:** ___male ___female

2. **Your Race/Ethnicity:**

___African American (non-Hispanic) ___Hispanic or Latino

___White (non-Hispanic) ___ Asian-American

___American Indian or Alaskan Native ___Native Hawaiian or Other Pacific Islander

___Other (please specify):_____

3. In what state do you practice? _____

4. In what year did you obtain your doctoral degree?_____

5. Please estimate how many forensic psychological evaluations (any type) have you conducted in the past year._____

6. Please estimate how many forensic psychological evaluations (any type) have you conducted in your career._____

7. How many forensic psychological evaluations of competence to make a will have you conducted in the past year? _____

8. How many forensic psychological evaluations of competence to make a will have you conducted in your career? _____

9. Are you familiar with your state's legal requirements for competence to make a will?

1	2
Yes	No

10. In what type of location do you work?

1	2	3
Urban	Suburban	Rural

VITA

Christina M. Finello, M.S., J.D.

Education

- Ph.D. Candidate, Clinical Psychology, Drexel University, Philadelphia, PA (Anticipated completion: June 2009)
- M.S., June 2003, Clinical Psychology, Drexel University, Philadelphia, PA
- J.D., May 2006, Villanova University School of Law, Villanova, PA
    - Admitted to Pennsylvania and New Jersey Bar, Fall 2006
    - Honors: Villanova Law Review, Managing Editor of Outside Articles & Staff Writer (2002 – 2004)
- B.A. Biological Basis of Behavior, May 1997, University of Pennsylvania, Philadelphia, PA

Experience

- Forensic Liaison, Department of Behavioral Health, Philadelphia, PA (August 2008 – present)
- Adjunct Professor, Drexel University (September 2008 – present; Summer 2004)
- Predoctoral Psychology Intern, United States Medical Center for Federal Prisoners, Springfield, MO (August 2007 – August 2008)
- Coordinator/Consultant, Pennsylvania Forensic Evaluation Project, Philadelphia, PA (September 2004 – July 2007)
- Practicum Student, Delaware Psychiatric Center, New Castle, DE (September 2004 – May 2005)
- Psychological Evaluator, Forensic Clinic, Drexel University (June 2003 – August 2004)

Publications

- Heilbrun, K., DeMatteo, D., Marcyzk, G., Finello, C., Smith, R., Mack-Allen, J. (2004). Applying Principles of Forensic Mental Health Assessment to Capital Sentencing. *Widener Law Review, 9*, 95.
- Finello, C.M. (2003). One Word Can Make All the Difference: An Examination of the Third Circuit's Handling of Health Care Insurance Policy Exclusion Clauses for Pre-existing Conditions. *Villanova Law Review, 48*, 1355.

Professional Presentations

- Egan, A., Snyder A., Wolbransky, M., Erickson, J., Finello, C., Fass, T., Heilbrun, K. (March 2006). *The Effect of Formal and Informal Coercion on Physical Aggression.* [Paper Presentation]. American Psychology Law Society.
- Finello, C.M. (July 2003). *Too Smart to Live: Problems and Implications of States' Application of the Definition of Mental Retardation in Light of Atkins v. Virginia.* [Poster Presentation]. APLS/EAPL 2003 Psychology and Law International Interdisciplinary Conference.