JUDGES' AND DISTRICT ATTORNEYS'

PERCEPTIONS OF COMPETENCY TO STAND TRIAL

EVALUATIONS IN OKLAHOMA

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CHAPTER I

INTRODUCTION

Competency to stand trial is the ability of a defendant to participate in his or her own defense. The issue of competency may be raised at any time during the trial process, and may be raised by the judge, the attorneys, or the defendant. Even though this process protects the defendant's rights, it delays the trial and adds costs to the court system. In addition, the defendant's fate lies in the results of the competency determination. Therefore, it is extremely important that the findings of competency evaluations be valid and helpful to the court because courts often agree with the recommendations of the evaluator (Zapf & Roesch, 2000). However, there has been much debate regarding the admissibility of mental health evaluators' testimony. It has been argued that the opinions of mental health professionals are "a threat to the explicit and implicit canons of science and practice" (Melton, et al., 1997, p. 4). Melton, et al. (1997) states, "In scientific terms, the law expects incremental-not absolute-validity. The question is whether the mental health professionals' opinions will assist legal decision makers, not whether the opinions meet a particular standard of scientific rigor." The ultimate question would thus be: "What are legal experts' opinions regarding the accuracy of evaluations completed by mental health professionals?

Regarding validity of competency assessments, Skeem, et al. (1998) found that pairs of mental health professionals agreed on specific psychological deficits only 25% of the time. This would indicate a potentially significant number of cases in which competency decisions could be problematic. This concern has led to a progressive trend of research and development of new instruments to assist evaluators in determining competency. Although these tools perhaps increase the credibility of these evaluations, the evaluator's understanding of the construct of competency may still affect evaluation quality. The lack of a standardized definition of competency may impede evaluators' ability to provide helpful assessments. This deficiency in statutory definitions has led many states to provide more explicit standards of determining competency in their statutes.

Although the lack of a single definition of competency is a significant problem, courts often accept an evaluator's conclusion regarding competency without even reviewing the process and tools which the evaluator utilized. Not surprisingly, "studies have uniformly concluded that judges often defer to the opinion of examiners, with rates of judge-examiner agreement typically exceeding 90%" (Skeem, et al., 1998). Thus, if the evaluator's opinion is incorrect, a potentially incompetent defendant could be determined competent by the court or vice versa. As stated in *Cooper v. Oklahoma*, 517 U.S. 348 (1996), "An erroneous determination of competence has dire consequences for a defendant who has already demonstrated that he is more likely than not incompetent, threatening the basic fairness of the trial itself…these risks outweigh the State's interest in the efficient operation of its criminal justice system." Graham (2007) also asserted the importance of a correct determination of a defendant's competency; stating, "To

mistakenly deem a defendant competent when he or she, in fact, is not, would be a travesty" (p. 2).

The idea of competency goes back to English Common Law, which allowed the trial process of an offender to be stayed if he or she "be(came) absolutely mad" (Zapf and Roesch, 2000). In recent history, the law concerning competency was established in *Dusky v. United States,* 362 U.S. 402 (1960). In *Dusky,* it was ruled that "it is not enough for the district judge to find that 'the defendant [is] oriented to time and place and [has] some recollection of events,' but that the 'test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him.'" Although this ruling set the standard for trials concerning competency, it has long been described as an ambiguous and inexplicit standard, and although it united the legal and clinical professions, it also began a long battle between the two professions to find answers to the task of defining competency.

A. Statement of the Problem

There have been many articles published regarding forensic assessment, and, more particularly, criticizing forensic evaluations and evaluators. Further, some have stated that mental health assessments should be banned from courts until a more solid scientific foundation can be made (SEE Heilbrun and Collins, 1995). It has been criticized that "'occasional experts' or 'psychologists who supplement their general clinical practice with occasional forensic assessments' and 'enter into forensic assessment

with little or no specialized forensic knowledge'" are not properly trained to complete competency to stand trial evaluations (Skeem and Golding, 1998). Skeem and Golding (1998) also stated only 19% of states require evaluators to be certified for forensic assessment, and only 9% offer or plan to offer training. Although there have been many articles regarding these facts from the perspective of psychiatrists, psychologists, and other professionals from a variety of fields, the perceptions of judges and attorneys regarding competency to stand trial evaluations have not been thoroughly researched. Because the decision of competency is ultimately determined by the court, it is important to know and study the perceptions of judges and attorneys concerning the evaluation techniques used.

LaFortune and Nicholson (1995) studied the perceptions of district judges and attorneys in two urban counties in Oklahoma. In their research, it was found that participants preferred psychiatrists over psychologists, physicians, social workers, or other mental health professionals to complete competency evaluations. In addition, attorneys in their study were concerned with the content and quality of the written reports. It can be concluded from their study that legal professionals perceive a need for specialized forensic training in report writing. Recent research by Graham (2007) revisited the perceptions of Oklahoma defense attorneys on competency to stand trial evaluations. In her study, Graham found that defense attorneys believe these evaluations do not provide important information and that although there have been many changes to improve the assessment process, these changes do not appear to have significantly improved evaluation quality. Along with defense attorneys, judges and district attorneys are also very involved in evaluations of competency, and thus an understanding of their

perceptions of these evaluations is necessary for improving standards.

B. Purpose of this Study

Although there have been many efforts to improve the quality of forensic assessments over the past two decades, previous studies have shown legal professionals do not believe these evaluations are sufficient in assisting courts to make informed decisions about competency. Graham (2007) researched defense attorneys' perceptions of these evaluations; however, district attorneys' and judges' opinions also needed study. The purpose of the present study is to compare judges' and district attorneys' perceptions of competency to stand trial evaluations currently conducted in Oklahoma, with those of defense attorneys' found in Graham's study (2007) and those of judges, defense attorneys, and district attorneys reported by LaFortune and Nicholson (1995). The study conducted by Graham (2007), was also compared to the study conducted by LaFortune and Nicholson (1995). The results of this study were then combined with the results of the Graham (2007) study and compared to the results of the LaFortune and Nicholson (1995) study. In comparing the results of these studies, we can also examine how the perceptions of judges and attorneys have changed over the last decade regarding the quality of competency to stand trial evaluations.

In Oklahoma, evaluations are performed either by a local evaluator or at the Oklahoma Forensic Center (OFC). In this study, it was hypothesized that the quality of evaluations is similar, regardless of the setting at which they are performed, thus eliminating a strong preference for a particular setting. This would be comparable to the

results found by Graham (2007). Her findings indicate a similar level of overall satisfaction with OFC evaluations as with local evaluations. The results of the LaFortune and Nicholson (1995) study indicate a greater satisfaction with reports done locally over reports completed at OFC. Perhaps over the last two decades, OFC has made changes to improve their evaluations and their reports are now similar in quality to those reports completed locally.

It was hypothesized that, due to continued perceptions that psychiatrists are more qualified and educated, there is a strong preference for psychiatrists to complete competency to stand trial evaluations. According to LaFortune and Nicholson (1995), participants had a strong preference of psychiatrists to complete competency evaluations over psychologists, physicians, social workers, or other mental health professionals. Graham (2007) found attorneys continue to prefer psychiatrists slightly over doctoral-level psychologists, and significantly over social workers and other licensed mental health professionals. Frost et al. (2006), stated, "although forensic evaluation statutes in all but six states now allow psychologists and psychiatrists to be forensic evaluators, only seven states explicitly allow other mental health professionals to conduct forensic evaluations-and then often only of certain evaluations or in certain types of cases." It appears psychiatrists and psychologists continue to be seen as relatively more qualified to conduct competency evaluations.

It was hypothesized that judges and district attorneys would continue to find competency to stand trial evaluations to be lacking in necessary information and facts to adequately assess a defendant's competency to stand trial. This belief is thought to be primarily, or at least in part, due to insufficient forensic training given to evaluators, even

though the statutes mandate that only experienced and trained professionals should perform these evaluations. In addition, it was hypothesized that judges' and district attorneys' perceptions of competency evaluations would not significantly differ from one another. Also, perceptions would not differ significantly from those of defense attorneys in the study by Graham (2007). Because all these legal professionals have similar education and training, and see the same evaluations, it is thought they would have similar opinions regarding the evaluations.

Finally, it was hypothesized that perceptions of competency evaluations would be more positive in the current study than in the study by LaFortune and Nicholson in 1995. Changes in policies and increased knowledge of proper training and tools involved in completing evaluations would presume to increase the overall quality of evaluations over the past two decades, thus improving the perceptions of legal professionals.

C. Definition of Terms

For the purpose of this study, definitions from the Oklahoma statutes will be used. The Oklahoma statutes which address competency are found in 22 O.S. § § 1175.1-1175.8. "'Competent' or 'competency' means the present ability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him or her and to effectively and rationally assist in his or her defense" (22 O.S. § 1175.1 -1). "'Incompetent' or 'incompetency' means the present inability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him or her and to effectively and rationally assist in his or

her defense" (22 O.S. § 1175.1-2). "'Qualified forensic examiner' means any (a) psychiatrist with forensic training and experience, (b) psychologist with forensic training and experience, or (c) other licensed mental health professional whose forensic training and experience enable them to form expert opinions regarding mental illness, competency and dangerousness and who have been approved to render such opinions by the court (22 O.S. § 1175.1-5).

Many abbreviations will also be used. For the purpose of this study, District Attorneys will be abbreviated as "DA's," Assistant District Attorneys will be abbreviated as "ADA's," and the Oklahoma Forensic Center will be abbreviated as "OFC."

D. Limitations

A limitation of this study is that defense attorneys were not surveyed. Also, the present survey did not completely duplicate the survey completed by Graham (2007), or the original survey used in the study by LaFortune and Nicholson (1995). The present survey was converted to be directed toward judges and district attorneys in the state of Oklahoma. Another limitation was that the research only asked for the opinions of judges and district attorneys in Oklahoma, and did not include other states. In addition, some of the judges and district attorneys did not respond. However, in the present study, the response rate of 30.4% is considered adequate to form conclusions of the perceptions of judges and district attorneys who responded. Also, the current study was combined with the study by Graham (2007) to be compared to the LaFortune and Nicholson (1995) study. This presented a limitation due to time factors, as perceptions of judges' and

district attorneys' in the current study could have changed over the last 2 years, from the time Graham (2007) completed her survey of defense attorneys. Although the current study and the Graham (2007) study are only separated by 2 years, changes in policies, procedures and thus opinions could have deferred greatly within these 2 years. Additionally, the current survey was compared to the LaFortune and Nicholson (1995) survey and the Graham (2007) survey, however, the format of questions was slightly changed in the current survey therefore not all questions could be compared to the previous two studies.

CHAPTER II

REVIEW OF LITERATURE

According to the Oklahoma State Legislature, “no person shall be subject to any criminal procedures after the person is determined to be incompetent” (22 O.S. § 1175.2), thus making the determination of the competency of a defendant a substantial decision. The difficulty in this, however, is the lack of a clear and durable definition of competency to stand trial. In *Dusky v. United States,* 362 U.S. 402 (1960), the United States Supreme Court ruled that a defendant must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and “a rational as well as factual understanding of the proceedings against him.” This ruling, although considered ambiguous, set the standard by which courts should determine competency. *Pate v. Robinson,* 383 U.S. 375 (1966) landed in the United States Supreme Court after the trial court rejected contentions that the defendant was insane at the time in which he committed the offense, and now incompetent to stand trial. The case was appealed and taken through several courts until, in 1966, the United States Supreme Court ruled, “the evidence raised a sufficient doubt as to respondent’s competence to stand trial so that respondent was deprived of due process of law under the Fourteenth Amendment by the trial court’s failure to afford him a hearing on that issue.”

The issue of competency was further defined in *Drope v. Missouri*, 420 U.S. 16

(1975), when the United States Supreme Court concluded, "a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to trial." Then, in *Godinez v. Moran*, 509 U.S. 389 (1993), the Supreme Court held, "The competency standard for pleading guilty or waiving the right to counsel is the same as the competency standard for standing trial." In other words, if a defendant is found competent to stand trial, he is also competent to make his own plea and to waive his right to counsel. In *Godinez,* the United States Supreme Court cited *Westbrook v. Arizona,* 384 U.S. 150 (1966) (per curium), in which the Ninth Circuit Court found there was a hearing as to the defendant's competency to stand trial, but "no hearing or inquiry into the issue of his competence to waive his constitutional right to the assistance of counsel." The United States Supreme Court did not agree with this decision, stating the Ninth Circuit implied the *Dusky* standard of determining competency was "not 'a high enough standard' for determining whether a defendant is competent to waive a constitutional right." They also held the capacity for "reasoned choice" and whether a person has "rational understanding" is one in the same, and thus the standards should be the same for competence to stand trial and for competence to waive a constitutional right or plead guilty. The court in *Cooper v. Oklahoma*, 517 U.S. 348 (1996), held "because Oklahoma's procedural rule allows the State to try a defendant who is more likely than not incompetent, it violates due process." These landmark cases have improved the standard for determining competency; however, they have not perfected it. *Cooper v. Oklahoma*, 517 U.S. 348 (1996), cited the Oklahoma Court of Criminal Appeals as correctly observing that the "'inexactness and uncertainty' that characterize competency

proceedings may make it difficult to determine whether a defendant is incompetent or malingering." The competency standard continues to be uncertain and thus, fluctuates among states, courts, and individual forensic examiners.

A. Historical Practices to Modern Day Techniques

According to Borum and Otto (2000), in the early stages of clinical forensic psychology, psychologists generally used the tools and strategies that were familiar to them. These tests and techniques had been developed in general clinical settings. They then applied these clinical tests and techniques to legally relevant assessments and treatment (Borum and Otto, 2000). As a result, irrelevant and useless information was given to legal decision makers. "Furthermore, mental health professionals, including psychologists, generally lacked a firm scientific, or empirical basis for their methods, conclusions, and interventions" (Borum and Otto, 2000). Several early researchers trained in both psychology and law began making changes to improve the field of law and psychology. Paul Lipsitt, trained as a psychologist and as a lawyer, developed psychological assessment tools specifically designed to address legal questions, especially competency to stand trial questions. He initiated the work to develop the Competence Screening Test and the Competence Assessment Instrument. These tests began a progressive trend of "forensic assessment instruments" and the emergence of forensic psychology as a unique specialization in the fields of psychology and law (Borum and Otto, 2000).

Today, a vast array of forensic testing techniques is available to forensic

examiners. These techniques, coined “forensic assessment instruments” by Thomas Grisso in 1986, assist in making forensic evaluations more systematic, and thus more efficient in the decision making process of the court (Skeem et al., 2000). Research completed in 1995 found the most commonly used test instruments were the Minnesota Multiphasic Personality Inventory (MMPI), the Wechsler Adult Intelligence Scale-Revised (WAIS-R), the Rorschach Psychodiagnostic Inkblots (Rorschach), and the Bender Visual-Motor Gestalt Test (Borum and Grisso, 1995). Much empirical research has been done to question the regular use of these instruments for forensic examiners’ use. Borum and Grisso (1995) completed a study asking participants to “rate the importance of psychological testing,” as well as the importance of forensic assessment instruments. Psychological testing was defined in the study as “intellectual, objective, or projective tests and instruments designed for clinical evaluation, e.g., WAIS-R, MMPI, and Rorschach.” Forensic assessment instruments were defined in the study as “tests or instruments that were specifically designed to address legal issues, e.g., Competency to Stand Trial Assessment Instrument, Competency Screening Test, and Rogers Criminal Responsibility Assessment Scales.” Borum and Grisso found that with forensic psychiatrists and psychologists combined, only 45% reported using psychological tests frequently or almost always; while 50% sometimes or rarely used these tests. In regard to forensic instruments, 28% almost always or frequently used them, 27% sometimes or rarely used them, and 46% never used them. Nearly half of forensic examiners who participated in the study never use the forensic assessment instruments which are specifically designed to assist them in conducting forensic evaluations (Borum and Grisso, 1995). Another study found only 25% of forensic reports showed the evaluator to

have used relevant forensic assessment instruments in developing their opinions. However, 69% of forensic reports in the study showed the evaluator to have used traditional psychological instruments (Skeem and Golding, 1998). This may harken back to the idea that psychologists and psychiatrists are more apt to use tests that are familiar to them, or tests that are used in a clinical setting, as opposed to a forensic setting. Although these studies indicate a large number of evaluators use traditional psychological instruments instead of forensic assessment instruments when conducting evaluations, Skeem and Golding (1998), cited several authors when stating, "Psychological testing should be used in a forensic evaluation only when it can be specifically related to the legal construct."

Today, there are many new tests and techniques used, as well as some of the older measures that were devised in the past. The Competency to Stand Trial Assessment Instrument (CAI), involves interview questions based on the following 13 areas: "1) Appraisal of available legal defense, 2) Unmanageable behavior, 3) Quality of relating to attorney, 4) Planning of legal strategy including guilty pleas to lesser charges where pertinent, 5) Appraisal of role of participants in courtroom, 6) Understanding of court procedure, 7) Appreciation of charges, 8) Appreciation of range and nature of possible penalties, 9) Appraisal of likely outcome, 10) Capacity to disclose to attorney available pertinent facts surrounding the offense, 11) Capacity to realistically challenge prosecution witnesses, 12) Capacity to testify relevantly, and 13) Self-defeating versus self-serving motivation (legal sense)" (Grisso, 2003, p. 122-24). Grisso (2003, p. 130) also describes the CAI's sister test, the Competency Screening Test, which consists of 22 incomplete sentences to be completed by the defendant. The purpose of the Competency

Screening Test is to screen out the obviously competent defendants. In addition to these older measures, the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCATCA) includes 22 items divided into three parts. These parts are Understanding, Reasoning, and Appreciation (Grisso, 2003, p. 91). The Fitness Interview Test-Revised (FIT-R) includes 70 questions divided also into three parts: "1) Understanding the nature or object of the proceedings: Factual knowledge of criminal procedure, 2) Understanding the possible consequences of the proceedings: Appreciation of personal involvement in and importance of the proceedings, 3) Communicate with counsel: Ability to participate in defense" (Grisso, 2003, p. 102). The Georgia Court Competency Test-Mississippi State Hospital (GCCT-MSH) includes 21 questions divided into six categories. The GCCT-MSH is usually used as a screening instrument. The categories include: 1) Picture of the court, 2) Functions (of participants in the courtroom), 3) Charge, 4) Helping the lawyer, 5) Alleged crime, and 6) Consequences (Grisso, 2003, p. 116). These assessments have proven to be very useful in determining the competency of a defendant. However, forensic examiners may have to conduct a more thorough examination, after the screening tools and initial tests are complete, if it is not clear as to the conclusion.

In Oklahoma, policies and procedures have changed greatly regarding competency to stand trial evaluations. These changes have been promoted and championed by the Oklahoma Department of Mental Health and Substance Abuse (ODMHSAS) - Forensic Services led by William Burkett, MSW, Superintendent of the Oklahoma Forensic Center, Jeanne Russell, Ed.D., former Director of Psychology, Social Work, and Training, at the Oklahoma Forensic Center and Paul Lainer, M.D., Superintendent of the Oklahoma Forensic Center (Graham, 2007). Graham (2007) found

that significant changes in laws, procedures, and policies have been made with the goal of improving competency to stand trial evaluations since 1992, when the original data of judges' and attorneys' perceptions were collected. A shift from using psychiatrists to psychologists has occurred, and a preference for outpatient evaluations, seemingly to lower costs and save medical resources for treatment of patients. Also, the ODMHSAS - Forensic Services has since begun offering some training, although sporadic, in competency to stand trial evaluations to forensic evaluators. (Dr. Jeanne Russell, personal communication, April 5, 2009). Formerly Eastern State Hospital, the Oklahoma Forensic Center was renamed after the enactment of Senate Bill 149 in 1999. This facility is now exclusively for the forensic population. Also, ODMHSAS in July 2001 created a manual for "assisting mental health professionals responsible for providing evaluations and/or services to the court for defendants charged with a crime" and for "attorneys and judges in understanding the evaluation [process]…" (ODMHSAS, p.1). Apparently as a cost cutting procedure, O.S. § 1175.3 was also revised in 2000, requiring that the evaluation of a defendant's competency to stand trial be performed on an outpatient basis before the defendant is committed to the Oklahoma Forensic Center for an inpatient evaluation. This initial evaluation performed on an outpatient basis would hopefully screen out defendants who are obviously competent, thus saving resources and state money from further inpatient evaluations.

Statutes have also redefined a 'forensic examiner.' When data was collected by LaFortune and Nicholson in 1992, a "person could conduct a competency evaluation if he or she was a 'doctor'" (ODMHSAS, p.6). In addition, the Oklahoma statutes defined a doctor as "any physician, psychiatrist, psychologist or equivalent expert." According to

Siegel (2008), in the past, social workers were not allowed to give expert testimony on competence because statutes required appointment of psychiatrists or psychologists, or because competence "required a psychiatric or medical diagnosis, a diagnosis of a mental disorder." In November, 2000, the statute was changed to read: "a 'qualified forensic examiner' is any (a) psychiatrist with forensic training and experience, (b) psychologist with forensic training and experience, or (c) other licensed mental health professional whose forensic training and experience enable them to form expert opinions regarding mental illness, competency, and dangerousness and who have been approved to render such opinions by the court" (22 O.S. § 1175.1). This change in statutes allows mental health professionals other than psychiatrists and psychologists to complete competency evaluations and give expert testimony. However, the change is still new, and those in the court system are perhaps continuing to view other licensed mental health professionals as not qualified to complete competency to stand trial evaluations.

B. State Statutes and Guidelines

Some states have adopted their own criteria regarding one's competency to stand trial. For example, according to Oklahoma Statute 22 O.S. § 1175.3, some questions for forensic evaluators to assess while completing competency to stand trial evaluations are as follows:

1. Is the person able to appreciate the nature of the charges made against such person?

2. Is the person able to consult with the lawyer and rationally assist in the preparation of the defense of such person?

3. If the person is unable to appreciate the nature of the charges or to consult and rationally assist in the preparation of the defense, can the person attain competency within a reasonable period of time as defined in Section 1175.1 of this title if provided with a course of treatment, therapy, or training?

4. Is the person a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes?

5. Is the person incompetent because the person is mentally retarded as defined in Section 1408 of Title 10 of the Oklahoma Statutes?

6. If the answers to questions 4 and 5 are no, why is the defendant incompetent?

7. If the person were released, would such person presently be dangerous as defined in Section 1175.1 of this title?

These questions have changed since 1992 to assist in making the definition of competency more explicit for the forensic examiner and for the court. This is an important step in channeling defendants into appropriate treatment methods.

Not only have the Oklahoma statutes changed over the past two decades, but the statutes also vary from state to state. Texas, for example, gives the following list of procedures for forensic examiners to follow (Otto, 2006, p. 87):

1. Assess and describe the defendant's capacity to understand and participate in the legal proceedings.

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

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

1. an opinion as to the defendant's competency;
2. identification and discussion of any specific issues referred to the examiner by the court;
3. documentation of appropriate disclosures made to the defendant about the evaluation and report;
4. a listing of procedures, techniques, and tests used in the evaluation and the purposes of each;
5. observations, findings and conclusions on each issue referred for evaluation (or a statement of the reasons why such findings could not be made); and
6. if the defendant is considered by the expert to be incompetent, a description of the deficits and their relationship to the functional abilities required for competence, as well as treatment recommendation (p. 86).

In addition, the Missouri Institute of Mental Health Policy Brief (2003) outlined the

following issues to be addressed using direct quotations from the defendant whenever possible:

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

In Missouri, a defendant found incompetent to stand trial and committed is reevaluated for competency every six months (MIMH, 2003).

According to Roesch (1979), a person found incompetent averages three years hospitalization, with some spending up to 14 years in treatment. The length of time a person deemed incompetent to stand trial stays in treatment varies, and there are no established rules about the length of time a facility has to return a defendant to competency. The MIMH Policy Brief (2003) found one state reported the average length of time for an incompetent defendant to stay in treatment was 68 days, but this almost certainly varies from state to state and jurisdiction to jurisdiction.

C. Additional Factors - Malingering and Insanity

Determining competency is not a perfect science, even with the present state of the research. There are many factors that influence an examiner's determination of a defendant's competency to stand trial. Malingering is an issue which must always be considered when determining competency of a defendant. According to the Webster's II New Riverside University Dictionary, to 'malinger' means "to pretend to be ill or injured in order to avoid responsibilities or work." The American Psychiatric Association (2000) gives a definition in the DSM-IV-TR of what factors may increase the likelihood of malingering. These include (1) referral for a medico legal evaluation, (2) marked discrepancy between claimed stress and objective findings, (3) lack of cooperation during the diagnostic evaluation, and (4) the presence of Antisocial Personality Disorder. Most problematic are Skeem et al.'s (1998) findings that when assessing forensic report quality, 88% of reports examined did not address the issue of malingering. Expert raters in the study however, believed that in most (82%) of these reports, malingering was "probably not" or "definitely not" an issue. Of the reports that did address the issue of malingering, 58% ultimately determined the defendant was, in fact, malingering.

Malingering is just one more factor complicating the ultimate determination of competency. Therefore, specific instruments have been made to determine whether or not a defendant is malingering. Tests used specifically for the determination of malingering include: the Structured Interview of Reported Symptoms (SIRS), the Miller Forensic Assessment of Symptoms Test (M-FAST), and the Structured Inventory of Malingered Symptomatology (SIMS) (Vitacco, et al, 2006). Each of these tests has undergone

rigorous examination and are generally accepted in the field for identifying malingering. As with all topics concerning competency to stand trial evaluations, there is not one test or one procedure that will ultimately determine malingering. Each test has advantages and disadvantages, and it is thus at the forensic examiner's discretion which instrument(s) he or she will use, and what the ultimate determination will be.

Another issue which should be addressed is that of insanity. Many people confuse the insanity defense and competency to stand trial. According to the Missouri Institute of Mental Health Policy Brief (2003), "unlike Not Guilty by Reason of Insanity (NGRI), Incompetency to Stand Trial (IST) is not an established legal defense that can be chosen by the defendant as a way to resolve criminal charges." The Policy Brief goes on to state that unlike NGRI, the decision of a defendant's competency "lies outside the defendant's control." Additionally, Roesch (1979) stated, "the issue of competency is conceptually and legally distinguished from the responsibility (insanity defense) question in that responsibility deals with a defendant's mental status at the time a crime was committed, whereas competency is a defendant's ability to assist in the defense at the time of trial or other judicial proceeding." It is necessary for a forensic examiner and for legal professionals to distinguish between insanity and competency when conducting and reviewing evaluations.

D. Quality of Forensic Examinations

There have been numerous studies and articles published regarding the quality of forensic examinations and many recommendations have been made for improvement.

According to Skeem and Golding (1998), there are three central problems in forensic examiners' reports: "(a) failure to adequately address fundamental CST abilities, including defendants' decisional competence; (b) failure to present the critical reasoning underlying one's psycholegal conclusions; (c) failure to use forensically relevant methods of assessment." They concluded one reason for these failures is the lack of forensic training given to forensic examiners. In their study, Skeem and Golding (1998) ultimately concluded that forensic examiners who were not specifically trained in conducting competency evaluations tended to "rely on traditional clinical skills and attempt to generalize those to psycholegal assessments." These assessments, done by "occasional experts," appeared to do well with diagnosis and symptomatology, but tended to disagree in regard to a defendant's specific psycholegal abilities and impairments.

As addressed earlier in this study, the Missouri Institute of Mental Health Policy Brief (2003) addresses areas they believe should be included in competency evaluations, including: the defendant's ability to understand the charges against him or her, and the defendant's ability to assist in his or her defense. It was reported in this Policy Brief that "defendants charged with more severe crimes are more likely to be found CST." It was also found that of 11 defendants with an organic brain disorder, 100% were found incompetent to stand trail. On the other hand, of 79 defendants with other DSM-IV diagnoses, only 60% were found incompetent to stand trial (MIMH Policy Brief, 2003). These findings may support findings in previous studies that forensic examiners use traditional psychological testing rather than forensic assessment tests and instruments designed specifically for determining a defendant's competency. These findings would also indicate a potential problem with the testing techniques of forensic examiners. It

would seem many examiners are relying on specific disorders to determine competency, rather than properly testing the individual to determine his or her current psycholegal abilities and impairments. According to Grisso (1986), there are two necessary components in regard to competency evaluations: (1) a clear understanding of the law's view of the specific competence, and (2) empirical research and clinical practice consistent with professional standards.

Other factors, such as amnesia and dementia, also affect a defendant's competency. Zapf and Roesch (2000) cited *Wilson v. United States*, 391 F. 2d. 460 (1968) wherein the U.S. Court of Appeals for the District of Columbia held that six factors should be considered in determining whether a defendant's amnesia impaired his ability to stand trial:

- The extent to which the amnesia affected the defendant's ability to consult with and assist his lawyer.
- The extent to which the amnesia affected the defendant's ability to testify in his own behalf.
- The extent to which the evidence in suit could be extrinsically reconstructed in view of the defendant's amnesia. Such evidence would include evidence relating to the crime itself as well as any reasonable possible alibi.
- The extent to which the government assisted the defendant and his counsel in that reconstruction.
- The strength of the prosecution's case. Most important here will be whether the Government's case is such as to negate all reasonable

hypotheses of innocence. If there is any substantial possibility that the accused could, but for his amnesia, establish an alibi or other defense, it should be presumed that he would have been able to do so.

- Any other facts and circumstances that would indicate whether or not the defendant had a fair trial.

As pointed out by Zapf and Roesch (2000), any symptom could be substituted for amnesia in the above case. They go on to say there are two areas that must be addressed in competency reports: "the defendant's current clinical presentation (including the defendant's presentation and possibly his or her motivation, test results, reports of others, and diagnosis) and some statement about the defendant's ability to proceed to trial (or the next stage in the proceedings)." Professionals may have deferring opinions on the exact procedures and tests to use in competency to stand trial evaluations. Perhaps this is due to each professional's unique training and experience used in the assessment process. Every evaluator and every defendant is unique. Moreover, evaluators must tailor the different procedures and techniques used for each case.

The present study is based upon research completed by Graham (2007), which found that defense attorneys in Oklahoma do not believe they are receiving quality evaluations. According to her study, defense attorneys believe that evaluations do not report much of the information they consider important. Reports may need to include: details concerning medications the defendant may be taking, psychological disorders, past drug and alcohol abuse, and how well the defendant processes information. Graham also discussed the fact that incompetent defendants that are incorrectly found to be competent to stand trial are being denied their right to a fair trial as is their right

according to the Fourteenth Amendment of the United States Constitution, a situation that all legal professionals should believe to be paramount. This study will look beyond defense attorneys' perceptions of competency evaluations, and include the perceptions of both judges and district attorneys to develop a better understanding of what needs to be changed to provide defendants an accurate evaluation, and thus ensure each defendant a fair trial.

CHAPTER III

METHODOLOGY

A. Participants

The participants in this study were judges, district attorneys, and assistant district attorneys in all counties in the state of Oklahoma. The study included surveys sent to 240 judges and 376 district attorneys and assistant district attorneys. There were a total of 616 participants polled in the study.

B. Instrument

There were two forms of the survey; one form, designed for district attorneys and assistant district attorneys (Appendix A), and another form, designed for judges (Appendix B). These forms were taken from the study completed by Graham (2007), and revised by Kathryn A. LaFortune, Ph.D., to be directed toward judges, district attorneys, and assistant district attorneys in the current research, as opposed to defense attorneys in the research conducted by Graham (2007). The cover letter (Appendix C) was also arranged by Kathryn A. LaFortune, Ph.D., in accordance with suggestions by Dillman (1978). The questions asked on the survey were the same or similar to those asked in the

previous study by Graham (2007). The focus of the survey was on judges', district attorneys', and assistant district attorneys' preferences of professionals who perform these evaluations, preferences of evaluation location, and perceptions of the quality of competency reports.

The survey was seven pages in length and included eighteen questions. Sixteen questions were quantitative in nature and two questions were qualitative in nature. Question 1 asked the participant to write in the number of cases he or she had prosecuted or presided over in which the defendant was evaluated by a mental health professional due to a question of the defendant's competency to stand trial. Questions 2 and 3 asked the participant to indicate where his or her competency to stand trial evaluations were performed, and where the participant preferred to have evaluations performed. Questions 4-10 asked a series of questions regarding competency evaluations performed locally, and those performed at the Oklahoma Forensic Center. The participants were asked in Question 11 whether they would prefer evaluations to be done locally or at the OFC if the professionals performing the evaluations were equally skilled. Questions 12 and 13 asked participants to rank professionals as to preference for their competency evaluations, and to rate the same professionals as to how valid they would consider their competency evaluations. Participants were asked, in Questions 14-16 respectively, to rate the content of competency to stand trial reports completed locally, at the OFC, and their optimal frequency in reports using a five-point Likert scale. The criterion in questions 14-16 were very similar to the criterion found in the Competency Assessment Instrument (CAI), which is a leading instrument used by evaluators to conduct competency to stand trial evaluations. Questions 17 and 18 were open-ended questions, asking what other elements

the participants believed should be addressed in a competency to stand trial evaluations and any further comments participants might have regarding competency evaluations.

C. Procedure

The survey and cover letter were sent by mail from Oklahoma State University-Center for Health Sciences to 616 participants in the summer of 2008. The cover letter was on Oklahoma State University-Center for Health Sciences letterhead. A self-addressed, stamped envelope was also included to facilitate a return response. Participants were asked to respond and send responses by mail. Confidentiality was ensured by stating in the cover letter sent with each survey, not to provide any identifying information in the response. The study was reviewed by the Institutional Review Board (IRB) prior to any mailings, and it was determined that this study was exempt from full board review because of the confidentiality measures that were in place (Appendix D). The surveys were then collected and given to this author. The data were coded, analyzed, and reported in a descriptive format. Between group comparisons were performed using student t-tests and ANOVA tests. Some of the results of the study were also analyzed and compared to the results found by Graham (2007) and those found in the 1995 study by LaFortune and Nicholson (1995).

CHAPTER IV

RESULTS

Of the 616 participants polled, 165 completed surveys were returned. Twenty-two (22) incomplete surveys were returned, for a total of 187 surveys returned by participants. The total return rate was 30.4%, and the total return rate of completed surveys was 26.79%. The 22 incomplete surveys returned had written comments by the participants, stating that they could not fill out the survey for various reasons (ie. they do not work with competency evaluations; they have not worked in their current position for 3 years). The total return rate for judges' surveys was 37.08%, with the total return rate of completed surveys by judges being 31.25%. Additionally, the total return rate of district attorneys' and assistant district attorneys' surveys was 26.06%, with the total return rate of completed surveys by district attorneys and assistant district attorneys being 23.94%. This return rate is comparable to that obtained by Graham (2007), with 31%, and LaFortune and Nicholson, with 43%. Participants reported an average of 21 cases in the last 3 years in which the defendant's competency to stand trial was in question and was thus evaluated by a mental health professional (M=21.00, SD=34.933, range=1-350). Judges reported a slightly higher number of cases involving competency evaluations than did district attorneys and assistant district attorneys. Judges reported an average of 24 cases involving competency to stand trial evaluations (M=23.90, SD=45.80).

DA's and ADA's reported an average of 19 cases involving competency to stand trial evaluations (M=18.47, SD=21.40). A small percentage (3.6%) returned surveys stating they had never been involved in a case with a competency evaluation.

The participants were then asked where their competency evaluations are currently performed (locally or at the Oklahoma Forensic Center). Over one-half of total participants (60.6%) reported their evaluations are currently performed both locally and at the Oklahoma Forensic Center. Less than one-third of total participants reported their evaluations are performed locally (25.5%), and almost one-fifth reported their evaluations are performed at OFC (12.1%). In addition, very few (1.8%) reported they did not know where their competency evaluations are performed. The above results for all participants combined, as well as the results of judges and district attorneys separately are shown in Appendix E, **Table 1**. These results were similar to the results of the study by Graham involving defense attorneys, in which over half (53.33%) were performed both locally and at OFC, just over one quarter (28.89%) were performed locally, and under one fifth (17.78%) were performed at OFC. When dividing judges and district attorneys, judges reported almost one third (30.67%) of their competency evaluations were performed locally, with over half (60%) of judges reporting their evaluations were performed both locally and at OFC, and only a small percentage (6.67%) reporting their evaluations were performed solely at OFC. These numbers are comparable with district attorneys, who reported less than one quarter (21.11%) of evaluations were reported locally, over one half (61.11%) of evaluations were performed both locally and at OFC, and a slightly higher percentage than that of judges (16.67%) were performed solely at OFC. Competency to stand trial evaluations must be performed on an outpatient basis (locally)

before defendant's may be ordered to receive an inpatient (OFC) evaluation. OFC evaluations are ordered after a local evaluation is completed often if the local evaluator can't come to a solid conclusion regarding the defendant's competency and thus the defendant needs inpatient observation for a determination to be made, or when the judge does not agree with the decision of the local evaluator.

The next question asked where participants preferred to have their competency evaluations performed (locally or at OFC). The results were again similar to those found by Graham, indicating no strong preference for either setting. In the current study, approximately one-third of participants (33.7%) preferred evaluations to be done locally. Another one-third of participants (35%) preferred evaluations to be performed at OFC. Just under one-third had no preference (31.3%). However, when separating judges and DA's, there was a trend for local evaluations by judges (45.95% prefer local), and a trend for OFC evaluations by DA's (44.94% prefer OFC). The results of the study by Graham were combined with the current study, and it was found there is no preference for any location. (31.73% prefer local, 35.10% prefer OFC, and 33.17% have no preference). This was compared with the judges, DA's, and defense attorneys in the LaFortune and Nicholson (1995) study, which indicated a strong preference for local evaluations (66.40%). These comparisons are shown in detail in Appendix E, **Table 2**.

Question 11 of the survey asked participants where they preferred to have their evaluations done, assuming the professionals at both locations were equally skilled. Judges showed a slight preference for local evaluations (45.33%), but still somewhat neutral overall, with about one-third having no preference (32%). DA's were also neutral, with approximately one-third preferring local (30.34%), approximately one-third

preferring OFC (33.71%), and approximately one-third having no preference (35.96%). Graham (2007) found similar results with defense attorneys. In her study, there was no clear preference for any particular setting (36.36% preferred local; 29.55% preferred OFC; and 34.09% had no preference). When combining the results of the current study and the Graham (2007) study, there was a slight trend for local evaluations (37.02%), but no clear preference for any setting, with over one-third (34.14%) having no preference. The above results, comparing perceptions of judges and DA's, and the defense attorneys of the Graham study, are summarized in Appendix E, **Table 3.**

Participants were then asked to indicate their level of agreement with a series of statements regarding characteristics of competency evaluations from each site (locally and OFC). They were asked to use a five-point Likert scale (1=*strongly disagree,* 2=*somewhat disagree,* 3=*undecided,* 4=*somewhat agree*, 5=*strongly agree*), in regard to the following statements: (a) reports are submitted in a timely manner, (b) evaluators are familiar with appropriate legal criteria and issues, (c) evaluations have been understandable (clear language) rather than confusing (mental health jargon), (d) reports explain the factual basis of the conclusions about the defendant's capacity to appreciate the nature of the charge and assist in his or her defense, (e) information in reports have been useful in assisting the decision-making process for determinations of competency. They were also asked to use a five-point Likert scale to rank the overall quality of the reports (1=*very poor,* 2=*fair,* 3=*average*, 4=*good,* 5=*excellent*).

Regarding local evaluations, participants reported being somewhat "*undecided*" when asked if reports are submitted in a timely manner (M=3.84, SD=1.06), only somewhat agreeing that evaluators are familiar with legal criteria and issues (M=3.97,

SD=1.04), generally agreeing "*somewhat agree*" that evaluations are clear and not confusing (M=4.15, SD=0.94), somewhat agreeing that reports explain conclusions (M=3.85, SD=1.07), and that information in reports has been useful in assisting the decision-making process (M=4.13, SD=0.98).

Of those reports completed at OFC, participants tended to rate most characteristics slightly higher than those completed locally. When asked if reports are submitted in a timely manner, the results were generally positive (M=3.97, SD=0.97), with similar results found for evaluators being familiar with legal criteria and issues (M=4.46, SD=0.75). In addition, results were positive concering report clarity, explaining conclusions, and their utility in assisting the court. **Figure 1** in Appendix E shows a comparison of report quality by location. **Figure 2** in Appendix E shows a comparison of perceptions of reports by location and between judges and DA's.

When asked to rank the overall quality of the reports completed locally over the past 3 years, participants were again neutral, indicating these were slightly better than "*average*" (M=3.57, SD=1.07). The overall quality of the reports done at OFC were ranked as "*good*" (M=4.12, SD=0.77). Both the local and the OFC reports were ranked higher by judges, DA's, and ADA's than by defense attorneys in the Graham study. When judges' and district attorneys' ratings were parceled to examine group preferences for a particular setting, DA's rated OFC evaluations significantly higher than local evaluations in every characteristic, and in overall quality. Judges did not show as clear a preference, rating local evaluations higher in the characteristics of timeliness and use of understandable language, but not significantly higher. OFC evaluations only ranked significantly higher than local evaluations in familiarity with legal criteria and issues, and

in overall quality. These results are shown in detail Appendix E, **Table 4**.

Participants' responses to whether local reports have improved, declined, or remained the same showed a large percentage believe that local reports have remained the same (80.88% of judges and 82.67% of DA's). Defense attorneys in Graham's (2007) study shared similar perceptions, with the large majority (83.33%) believing local evaluations had improved. In this study only a small percentage of either group believed reports have improved (16.18% of judges and 9.33% of DA's). This is also similar to the results found in the 2007 Graham study (5.56% of defense attorneys). Similar percentages of judges and DA's (20.00% and 21.52% respectively) rated OFC evaluations as improved compared to defense attorneys (7.41%) in Graham's study. No judges and only 3.80% of DA's felt OFC evaluations have declined in the last 3 years. This is contrasted with the results that over one-fourth of defense attorneys (25.93%) in Graham's study believe OFC evaluation quality had declined. These results are in detail in Appendix E, **Table 5**.

Participants were then asked to rank four types of mental health professionals, ranking them as to their preference for conducting competency evaluations. For the total sample, the majority chose psychiatrists as their first choice (53.4%). Psychologists were also ranked as the number one choice by almost half the respondents (44.9%). These two professional groups were ranked as the first or second choice by almost all respondents (psychologists – 98.1%; psychiatrists – 92.5%). Social workers were the first or second choice of a very small percentage (4.5%) of participants. This percentage was even lower than the percentage of participants who ranked other licensed mental health professionals as provided by Oklahoma Statutes as their first or second choice (7.1% chose this group

as their first or second choice). As a group, judges showed a striking preference for psychiatrists (58.9% ranking psychiatrist as first choice). Judges also had a strong preference for psychologists (40.3% ranking psychologist as first choice). DA's showed an almost equally strong preference for psychiatrists (48.86% ranked as first choice), and psychologists (48.84% ranked as first choice). Social workers were ranked very low by both groups. No judges ranked social workers as their first choice and only one (1.43%) judge ranked social workers as second choice. In the same regard, very few (2.35%) DA's ranked social workers as their first choice and only 4.71% of DA's ranked social workers as their second choice. Social workers were ranked even lower than were other licensed mental health professionals as provided by Oklahoma statutes. These professionals were also ranked low, however, with very few (1.41%) judges ranking them as their first choice and only slightly more (3.61%) DA's ranking them as their first choice. These results are shown in Appendix E, **Table 6**.

Participants were also asked to rank each professional group as to the validity of their evaluations. They were asked to use a five-point Likert scale (1=*always valid*, 2=*usually valid*, 3=*neutral/undecided*, 4=*usually invalid*, 5=*always invalid*). Psychiatrists again got the best reviews from participants (39.8% rating evaluations from psychiatrists as "*always valid"*). Almost all participants (91.3%) viewed evaluations completed by psychiatrists as "*always valid*" or "*usually valid.*" Although psychologists' evaluations were rated by slightly fewer participants as being "*always valid*" (32.7%), a slightly higher percentage (92.6%) rated psychologists' evaluations as being "*always valid*" or "*usually valid*." Also, no participants rated psychiatrists' or psychologists' evaluations as being "*always invalid*". On the same note, only one participant (.7%) viewed other

licensed mental health professionals' reports as being "*always invalid*" and only five participants (3.3%) viewed social workers' reports as being "*always invalid*." Over half of participants (53.9%) were "*neutral*" regarding the validity of social workers' reports. Almost a quarter (24.3%) viewed social workers' reports as "*usually invalid*," compared to psychologists' reports, which were rated "*usually invalid*" by only one participant (.6%) and psychiatrists' reports, which were rated "*usually invalid*" by only two participants (1.2%). Over half of participants (54.1%) were "*neutral*" regarding other licensed mental health professionals' reports as well; and slightly fewer (20.5%) viewed this group's reports as "*usually invalid*." No judges reported a belief that evaluations completed by social workers were "*always valid*." Judges rated evaluations completed by social workers lower than did DA's (13.64% of judges believing these reports are "*usually valid;*" 21.14% of DA's believing these reports are "*always valid*" or "*usually valid*").

Judges and DA's rated evaluations completed by psychologists comparably, with about one-third of each group believing these reports are "*always valid*" (31.51% of judges; 33.71% of DA's). Judges rated evaluations completed by psychiatrists slightly higher than did DA's. Most judges (94.45%) rated these evaluations to be "*always valid*" or "*usually valid,*" and a slightly smaller percentage of DA's (88.80%) rated these evaluations to be "*always valid*" or "*usually valid*." Judges rated the evaluations completed by other licensed mental health professionals higher than did DA's. Of judges, less than one-eighth (7.69%) rated these evaluations as being "*always valid,*" compared to only a few (1.23%) DA's. More DA's (25.93%); however, rated these evaluations as being "*usually valid*" than did judges (13.85%). Regarding social workers and other

licensed mental health professionals, most participants remained "*neutral*" when asked about the quality of these reports. Other licensed mental health professionals' reports were rated higher than were the reports of social workers, however.

Finally, participants were asked to rate the frequency with which different criteria were included in the CST reports they have received. They were to use a five-point Likert scale to indicate frequencies *(1=never, 2=rarely, 3=sometimes, 4=often, 5=always).* The criteria used for this survey, as taken from the survey of Graham, were almost identical to suggested interview questions in the Competency to Stand Trial Assessment Instrument. Of those evaluations completed at OFC, 11 out of 14 of the criteria were viewed by only a few of the total participants as "*never*" occurring. These criteria included understanding attorney-client privilege (3.5%), capacity to disclose pertinent facts (0.7%), planning of legal strategy (6.4%), understanding of plea bargaining process (5%), capacity to testify relevantly (7.1%), self-defeating motivation (18.8%), unmanageable behavior (7.8%), memory (3.5%), concentration (5%), thought disorders (0.7%), and appraisal of key figures in the court (2.9%). The defendant's appreciation of the charge was viewed by almost all participants as *"always"* being included (85.1%) and all participants (100%) viewed this criterion as being included in reports completed at OFC "*always*," "*often*," or "*sometimes*." Over half viewed understanding attorney-client privilege (65.2%), quality of relating to attorney (63.6%), understanding of courtroom procedure (73.8%), capacity to disclose pertinent facts (71.6%), thought disorders (51.1%), and appraisal of key figures (65.5%) as being included "*always*" or "*often*." In comparison, less than half of respondents viewed planning of legal strategy (43.6%), understanding of plea bargaining process (49.6%), capacity to testify relevantly (43.6%), and memory (44.7%) as being

included "*always*" or "*often*." A much lower percentage of participants viewed self-defeating motivation (18.8%), unmanageable behavior (27.0%), and concentration (32.6%) as being included "*always*" or "*often*." The results of the actual frequency of these characteristics in reports completed at OFC are in Appendix E, **Table 7**.

Of reports completed locally, almost all participants (90.6%) viewed appreciation of charge as being included "*always*" or "*often*." Very few viewed this criterion as being included "*sometimes*" (8.0%), and only two participants viewed it as being included "*rarely*" (1.4%). Remarkably, only two other criteria were viewed as being included "*always*" or "*often*" by over half of the participants. These criteria included understanding of courtroom procedure (59.4%) and appraisal of key figures (51.1%). Less than half of participants viewed understanding attorney-client privilege (46.4%), quality of relating to attorney (47.8%), capacity to disclose pertinent facts (49.3%), and thought disorders (45.3%) as being included "*always*" or "*often*." An even lower percentage viewed planning of legal strategy (26.8%), understanding of plea bargaining process (28.7%), capacity to testify relevantly (29.4%), self-defeating motivation (18.8%), unmanageable behavior (23.0%), memory (32.1%), and concentration (27.2%) as being included "*always*" or "*often*" in local reports. These results of the actual frequencies in local reports are outlined in Appendix E, **Table 8**.

Participants were then asked to indicate how often they believe each of the 14 criteria *should* be included in competency reports. All participants (100%) believed a defendant's appreciation of the charge against him or her should be included in reports "*always*" or "*often*." Over three-fourths (75.3%) of participants believed understanding of attorney client privilege should be included "*always*" or "*often*." A majority of

participants (81.9%) believed quality of relating to attorney should be included "*always*" or "*often*." Just over half believed planning of legal strategy (52.3%), understanding of plea bargaining process (66.0%), unmanageable behavior (64.1%), concentration (62.2%), and appraisal of key figures in the court (63.6%) should be included "*always*" or "*often*." A strong majority of participants believed thought disorders (83.3%), memory (72.4%), capacity to testify relevantly (72.4%), capacity to disclose pertinent facts (88.5%), and understanding of courtroom procedure (75.6%) should be included "*always*" or "*often*." The only criterion believed to be used "*always*" or "*often*" by less than half of participants was self-defeating motivation (47.4%). In the same regard, over a quarter (25.3%) believed this criterion should be included "*rarely*" or "*never*." Participants' beliefs of optimal frequencies are in Appendix E, **Table 9**.

The actual perceived frequency of characteristics in OFC and local reports was then compared to the optimal perceived frequency of characteristics by participants of the current study. **Figure 3** in Appendix E show a comparison of each of the 14 characteristics by location and as compared to the optimal amount perceived by participants in this study. Local evaluations were rated lower for each characteristic than were OFC evaluations. Notably, both local and OFC evaluations fell short of what participants believed to be optimal in this study in every category. These results are detailed in Appendix E, **Table 10**. Defense attorneys' perceptions in Graham's (2007) study were then combined with judges' and district attorneys' perceptions in the current study. These perceptions are outlined in Appendix E, **Figure 4**.

The difference in perceptions of district attorneys, judges, and defense attorneys was also examined. Defense attorneys in Graham's study perceived every criterion as

being included less often than did judges or district attorneys with the exception of Appraisal of Key Figures in Court. Defense attorneys also expect more of competency reports than do judges and district attorneys, as they rated optimal frequencies higher with the exception of Appreciation of charges. A full comparison of these results is outlined in Appendix E, **Table 11**. One-way ANOVA's were also used to test for opinion difference among the three groups of legal professionals. Opinions regarding the overall quality of local evaluations did not differ significantly across the three groups, $F(2, 177) = 0.3708$, $p = 0.69$. Opinions regarding the overall quality of OFC evaluations did not differ significantly across the three groups, $F(2, 162) = 0.1227$, $p = 0.88$. The only other result in questions 4-10 that did not differ significantly was opinions of timeliness regarding OFC evaluations $F(2, 175) = 0.00778$, $p = 0.93$. All other results in questions 4-10 did differ significantly across the three groups of legal professionals.

Finally, judges and district attorneys in the current study were grouped with defense attorneys in the Graham study; and their results were compared to the results of judges, district attorneys, and defense attorneys in the LaFortune and Nicholson (1995) study. Participants in the current study joined with participants in the Graham study rated all actual frequencies of characteristics higher than the participants of the LaFortune and Nicholson (1995) study, with the exception of Unmanageable Behavior and Thought Disorders, which were rated only very slightly higher in the 1995 study. When looking at optimal frequencies, participants in the current study and the study by Graham rated expected frequencies similarly to the frequencies in the 1995 study. A full comparison of these results can be found in Appendix E, **Table 12**.

The last two questions were open ended, the first asking what other elements the participant believed should be addressed in the body of a competency report. Responses included; desire to have more information regarding defendants' medication, degree of mental retardation or developmental disability, effect of mental disorders, permanency of mental disorders, necessary treatment to regain competency, details of tests done on the defendant to determine competency, and health concerns. **Table 13** in Appendix E gives a full narrative of these responses given by judges. Similarly, **Table 14** in Appendix E gives a qualitative narrative of these responses given by district attorneys.

The last question of the survey asked participants to write any further comments they had regarding competency evaluations. Responses varied greatly on this question. Some respondents reported the evaluations they have received are excellent, "In general I'm very pleased with the thoroughness and professionalism shown in both doing and reporting competency evaluations," while other respondents reported they were not particularly satisfied with the evaluations they have received: "I have had the local evaluator testify that a particular defendant was both suicidal and homicidal, couldn't assist his attorney in defending the case, but did not need treatment or therapy. Some of the evaluators need to be evaluated themselves." **Table 15** in Appendix E gives a full narrative of these responses given by judges. **Table 16** in Appendix E gives a full narrative of these responses given by district attorneys.

CHAPTER V

DISCUSSION

The purpose of this study was to assess the perceptions of judges' and district attorneys' in Oklahoma regarding competency to stand trial issues, as there has been very little research completed in this area. It was hypothesized that the quality of evaluations completed locally and at OFC would be perceived as similar, and there would not be a strong preference for one particular setting over the other. It was also hypothesized that there would be a strong preference for psychiatrists to complete competency evaluations, as a preference for psychiatrists was shown in the study by Graham regarding perceptions of defense attorneys'. Additionally, it was hypothesized that judges and district attorneys would perceive evaluations as lacking in necessary information and facts to assess a defendant's competency to stand trial. Also, judges' and district attorneys' opinions regarding competency evaluations would not differ significantly from each other or from defense attorneys' opinions found in Graham (2007). Finally, it was hypothesized that participants in this study combined with defense attorneys in the Graham (2007) study would rate evaluations more positively than participants rated evaluations in the Lafortune and Nicholson (1995) study.

The current study found no strong preference for local evaluations or for evaluations completed at OFC (locally: 33.7%; OFC: 35.0%; and no preference: 31.3%).

These results are very similar to those found by Graham (2007) when polling defense attorneys (locally: 24.44%; OFC: 35.56%; and no preference: 40.00%). However, when separating judges and DA's and looking at their perceptions, judges showed a trend of preferring local evaluations, and DA's showed a trend of preferring OFC evaluations. DA's, on the other hand, may perceive OFC evaluators as being more skilled. When combining all three groups (judges and DA's in the current study and defense attorneys in the Graham (2007) study), the results showed no preference for either setting. These results were compared to the LaFortune and Nicholson (1995) study. At that time, they found judges, DA's, and defense attorneys had a strong (66.40%) preference for local evaluations, with only 9.3% preferring OFC evaluations. It seems that overall in the last two decades, legal professionals have modified their opinions regarding both OFC and local evaluations. There is no clear preference at this time for a particular setting. This is perhaps due to lack of training for local evaluators, or the perception of such, and the increasing specialization OFC has developed for completing competency evaluations.

When specific legal professionals are examined separately, it is of interest that the two groups showed a preference for different locations. Judges showed a preference for local evaluations (45.95%), however, DA’s preferred OFC evaluations (44.94%). Overall, our findings support the hypothesis that as a whole, legal professionals have no strong preference for a particular location; but their perceptions vary strongly when examined by type of legal professional. One possible reason for judges preferring local evaluations is that judges may have tendencies to form relationships with local evaluators in small communities. Also, when looking at ratings by judges of characteristics of reports completed locally and by OFC, judges rated local evaluations slightly higher in

timeliness and use of understandable language. Judges rated OFC evaluations higher in every other characteristic. Perhaps judges value timeliness and use of understandable language higher than they do many other report characteristics. Judges continued to show a preference for local evaluations when asked where they would prefer to have their competency to stand trial evaluations performed, assuming the professionals were equally skilled (45.33% prefer local). DA's were neutral, showing no preference for either location if professionals were equally skilled. This may indicate a perception by DA's that local evaluators do not have the training or skills necessary to complete quality evaluations. There may also be a perception among the legal community that evaluations completed at the Oklahoma Forensic Center favor a determination of competency, because of limited bed space and time factors. Legal professionals may perceive OFC to be more likely to find malingering when evaluating defendants than local evaluators also because OFC is responsible for the training in this area. In questions 17 and 18 of the survey (Appendix E, **Tables 14 and 16**), one of the issues of most concern to district attorneys was that of malingering. Many responded they would like to see malingering brought up more often in competency to stand trial evaluations.

The results of the current study also show that participants continue to have a preference for psychiatrists. However, this preference is not strong, and is only slightly higher than the preference for doctoral-level psychologists. The very low preference for social workers and other licensed professionals is cause for concern. Despite seemingly equal qualifications, these groups are underrated and most likely continue to be under used. Perhaps judges and district attorneys are not knowledgeable regarding the training these professionals have undergone in order to complete competency evaluations. One of

the main reasons for including these professionals into the CST process is to contain the costs of using psychiatrists or psychologists to complete the evaluations. DA's rated both social workers and other licensed mental health professionals higher than did judges, and also, more DA's rated these two groups' evaluations as being valid more often than did judges. No judges rated social workers as being their first choice and only one judge rated this group of professionals as being their second choice. All participants rated social workers and other licensed mental health professionals very low. This is perhaps because the background training of psychiatrists and psychologists for forensic assessment is not known by legal professionals. Despite the fact that judges and DA's do not prefer evaluations completed by social workers or other licensed mental health professionals, the majority of participants did not rank their evaluations low. The majority of participants were neutral regarding the validity of social workers' and other licensed mental health professionals' evaluations. Therefore, the lack of preference for social workers and other licensed mental health professionals could be due to perceived lack of education or training given to these two groups. Siegel (2008) indicated it is not an evaluators' profession that should be taken into account when qualifying a competency evaluator, but rather their degree of specialized training, education and experience in the field of evaluating competency that should be taken into account. In the past, courts have rejected expert testimony on competency issues by social worker's because competence required a diagnosis of a mental disorder or because statutes specified only psychiatrists or psychologists were qualified experts. Siegel (2008) states the typical issue in qualifying social workers as experts on competence has been their ability to diagnose mental disorders. In the past several decades, social workers have gotten increased

education and training that will assist them in making diagnoses and sound clinical decisions, however, their reputation of being unqualified has slowed them from being deemed qualified by the courts.

The state statute now allows psychiatrists, psychologists, or other mental health professionals with forensic training and experience to complete competency evaluations, but the low number of individuals involved in the court system who actually prefer social workers or other mental health professionals to complete evaluations is cause for concern. This is perhaps because the statute specifically states "psychiatrists with forensic training and experience," and "psychologists with forensic training and experience." The statute clusters all "other licensed mental health professionals" into one group and also states these professionals should be "approved to render such opinions by the court." In the wording of the statutes, these "other" licensed mental health professionals do not sound as qualified as do psychiatrists and psychologists. According to Frost et al. (2006) only seven states clearly permit other mental health professionals to perform forensic evaluations. It seems the low perceptions of legal professionals for social workers and other licensed mental health professionals might very well come from the statutes defining a forensic professional. Also noteworthy is the fact that although psychiatrist's evaluations are ranked the highest, and they are preferred by most participants in this study, it has been many years since psychiatrists have regularly completed these evaluations. The cost of using a psychiatrist to complete evaluations today is much higher than the cost of using other professionals; therefore psychiatrists rarely complete these evaluations. Although psychiatrists were strongly preferred, this finding did not support

the hypothesis, because there was not a strong preference for psychiatrists over doctoral-level psychologists.

Judges and district attorneys also noted perceived deficits in competency reports. However, the perceptions of participants in this study were not as negative as those perceptions found by Graham when polling defense attorneys. Although criteria such as "*quality of relating to attorney*", "*understanding of courtroom procedure*", "*capacity to disclose pertinent facts*", and "*thought disorders*" are not being used in evaluations all the time; these criteria are being included in reports most of the time in the perceptions of over half the participants in this study. There are, however, shortcomings in competency reports as indicated by participants. Many criteria that participants believe should be included in evaluations were reported as being included only "*sometimes*." Reports completed at OFC were found by both judges and DA's to include more of the criteria which should be included, more of the time, than the reports completed locally. Over three-fourths of total participants believed *appreciation of the charge, ability to understand attorney-client privilege, quality of relating to attorney, understanding of courtroom procedure, capacity to disclose pertinent facts,* and *thought disorders* should be included in reports. Although OFC reports were found to include these things slightly more often than local reports, reports from both locations were obviously lacking in these criteria. This supports the hypothesis that reports continue to lack in necessary information. This is perhaps due to the fact that evaluators are still not getting the proper training and education in the field of evaluating competency.

As indicated earlier in this study, it has been found in past research that evaluators are not using the tools necessary to complete quality competency evaluations. In the same

regard, it seems legal professionals also do not know or understand the need for specific competency tools when conducting evaluations. In the survey for the current study, the criteria selected for questions 14-16 were identical to the suggested interview questions in the Competency to Stand Trial Assessment Instrument. Despite this, a DA in this study in Appendix E, **Table 18**, commented, "Many of your questions in 14-17 are irrelevant. The standard is, 'can the defendant appreciate or understand the nature of the charge and assist his attorney.' His quality of understanding and trial strategy are non-sense. Mentally disturbed people often know exactly what they are doing and then try to use their diagnosis as a defense." Comments such as this were written also in the survey beside questions 14-17, saying they did not answer these because they were irrelevant. This would indicate a perception by legal professionals that the specific instruments created for competency evaluations are not needed. Perhaps the very questions they believe are unnecessary could give them the answers they need for a quality evaluation.

In addition, the current study found overall report quality of those evaluations done locally to be about average and the overall report quality of those evaluations done at OFC to be good. These results are more positive than the results found by Graham when polling defense attorneys. She found local reports to be rated fair and those performed at OFC to be rated barely average. The perceptions of judges' and district attorneys' in the current study are higher toward both local and OFC evaluations than those perceptions of defense attorneys in the study by Graham. Additionally, DA's perceptions of reports completed at OFC are significantly higher in every area than their perceptions of reports completed locally. One possible reason for this is the changes that have been made in policies and procedures at OFC. It is possible legal professionals have

begun to see the changes and likewise see improvements being made in forensic evaluations. More specifically, the perceptions of judges' are higher than the perceptions of district attorneys' and defense attorneys in the study by Graham for all evaluations. One reason for this could be that attorneys are more critical of evaluators and evaluations in general, due to the fact that they are advocating for either the defendant, or for the state.

Judges rated OFC evaluations significantly higher in familiarity with legal criteria and issues, and overall quality than they did local evaluations. Despite this, they indicated a preference for local evaluations. This is of much interest, as it would seem judges must have underlying thoughts or interest in local evaluations, since they do not perceive local reports are of higher quality overall. Judges did rate local evaluations as being timelier and more understandable. Since judges do prefer local evaluations, perhaps they believe timeliness and ability to understand the evaluations are the most important factors in competency to stand trial evaluations. These findings do not support the hypothesis that the perceptions of judges', district attorneys', and defense attorneys' would not differ significantly. Judges had the highest opinions of evaluations, and defense attorneys had the lowest opinions of evaluations. As seen in Appendix E, **Figure 3**, judges rated local evaluations significantly higher than DA's in every characteristic and in overall quality. Judges also rated OFC evaluations slightly, but not significantly higher than did DA's. DA's and defense attorneys rated evaluations similarly, with defense attorneys having the lowest perceptions of all evaluations, and the highest expectations for evaluations.

Lastly, the current findings did not support the hypothesis that current opinions would be more positive than the opinions of participants in the 1995 study. In the 1995

study, participants rated local evaluations between "*average*" and "*good.*" In the current study, participants rated local evaluations also between "*average*" and "*good*." Local evaluations in the current study were rated slightly lower than local evaluations in the 1995 study. OFC evaluations were rated between "*fair*" and "*average*" in the 1995 study. OFC evaluations were rated between "*good*" and "*excellent*" in the current study. These results show perceptions of evaluations completed at OFC have increased significantly since 1995, whereas perceptions of local evaluations have remained the same or even declined slightly since 1995. This is likely because OFC has made many changes over the last two decades to improve its facility and has begun offering training and education in this area. Local evaluators have not likely made these changes, or at least continue to be perceived as not making these changes, as forensic training continues to be scarce. Also, local evaluators may not complete competency evaluations often. Some local evaluators complete evaluations very rarely, sometimes only one or two evaluations per year. This could indicate lack of experience in completing evaluations.

Since each of the 14 criteria surveyed in this study is the same as the criteria found in the Competency to Stand Trial Assessment Instrument, it is assumed that evaluators are not using this testing material when conducting evaluations.. This is supported by the study done by Skeem and Golding (1998) which found only 25% of examiners used competency assessment instruments. Although it seems there continues to be a very low number of evaluators using these instruments, they are an important part of competency evaluations. Without the use of these instruments, it would seem competency evaluations are lacking in the information needed to assist the court in

making a determination of competency. The low use of these instruments is not fair to the court system, and represents an injustice to the defendant.

Also, the lack of use of social workers and other licensed mental health professionals has a negative effect on everyone. According to research, these professionals go through the same training and are just as qualified to perform competency to stand trial evaluations as are doctoral-level psychologists and psychiatrists. Either due to bias, past experiences, or actual lack of quality, the reports of these two professional groups are seen by judges and DA's as lacking in quality, and these two groups are, therefore, not being used as the first or even second choice of most judges and DA's. It is very important to ensure these groups have the same knowledge and understanding of CST evaluations as do psychologists and psychiatrists, and it is also very important that both judges and DA's understand that these professionals are just as qualified as psychologists and psychiatrists to conduct competency to stand trial evaluations.

Overall, it seems that despite changes that have been made in the area of competency evaluations, legal professionals continue to see evaluations as lacking. There have been changes in state statutes and in policies and procedures by the conducting evaluations. Despite this, the vast majority of judges, district attorneys, and defense attorneys continue to believe the overall quality of reports has not changed (in the past 3 years from the date of survey completion). When combining the results of the three legal professionals, 82.12% believe local evaluations have remained the same, and 75.30% believe OFC evaluations have remained the same. This indicates a clear need for

increased knowledge of completing evaluations, and perhaps increased training in the area of forensic assessments to improve these evaluations.

CHAPTER VI

SUMMARY AND CONCLUSIONS

The perceptions of judges' and district attorneys' regarding competency to stand trial evaluations have been examined by very few researchers. Despite this fact, legal professionals' perceptions are extremely important to ensure defendants are receiving fair evaluations, and thus fair judgments, when it comes to determining competency. The current study looked at judges' and district attorneys' perceptions of competency evaluations and also compared these results to those found by Graham, and by LaFortune and Nicholson.

There were a few limitations of this study that should be kept in mind when interpreting the results. This study surveyed judges and DA's from all counties in in Oklahoma, however, there were ten surveys sent to ADA's that were returned unopened with an unknown address. These surveys were subtracted from the total number of surveys sent, for a total of 616 total surveys sent. Also, as in every study, it must be kept in mind that participants may have felt obligated to respond, or may have responded because they felt very strongly about this issue. Another limitation is the comparison of the results of this study to the results of previous studies. For comparison purposes, the results of this study were grouped with the results of the study by Graham

(2007). This grouping of results was then compared to the results of the LaFortune and Nicholson (1995) study. The surveys that were sent to participants in each study were comparable but not identical. However, the questions on the LaFortune and Nicholson (1995) study, the Graham (2007) study, and the current study were not identical. This resulted in a fewer number of possible comparisons between studies. Also, the combination of the results of the Graham (2007) study and the current study caused limitations. Graham's study was completed two years before the current study, and changes in policies and procedures, or simply changes in time, could have caused significant differences in opinions. The judges and DA's in the current study may have had very different perceptions two years ago.

The results found in this study were similar to those found in the Graham study completed in 2007. Despite changes and attempted improvements to the system and legal procedures surrounding competency to stand trial evaluations, it appears these changes have not resulted in significant improvements in evaluation quality. Although the current study did show a slightly higher rating for evaluations as a whole, legal parties continue to believe that these evaluations are not optimal in providing necessary information for this legal issue. Due to these perceived shortcomings, it would seem the evaluations that are currently being used by the courts are not of adequate quality. Also, social workers and other licensed mental health professionals are not being used frequently, and there may be multiple reasons for this, such as inconsistent training and statutory wording that deemphasizes social workers' and other licensed mental health professionals' role in this process. Even though psychiatrists were most favored to perform competency evaluations, it is almost unheard of for psychiatrists to do so in Oklahoma. At present, it

is almost unheard of for psychiatrists to conduct these evaluations. Funding for competency evaluations is likely insufficient to attract this particular group of professionals for this task. Despite this, psychiatrists' evaluations for the last three years were rated highest by participants in this study, and psychiatrists were ranked as first choice by these legal professionals. Therefore, despite the fact that psychiatrists very rarely complete these reports, there continues to be a preference for psychiatrists as compared to other mental health professionals.

Furthermore, results suggest that legal professionals do not believe that evaluators understand the importance of using competency assessment instruments. Without the use of these instruments, defendants may not be receiving the proper testing to ensure the determination of their competency is accurate. Although not examined specifically in the current study, previous research has shown evaluators are not receiving proper forensic training, and may not be using proper forensic assessment instruments when conducting evaluations. Not utilizing FAI's in some cases has been suggested by some scholars as lowering the quality of evaluations. When viewing legal professionals' perceptions in the current study, it was found that they too, do not believe the criteria found in forensic assessment instruments has been included in competency evaluations. It appears there is a lack of education for all professionals surrounding the issue of competency to stand trial.

Future research should continue to look at the perceptions of those involved in the court system, who are actively using these evaluations, and at various jurisdictions on a national level. It would be interesting to survey the perceptions of those involved in the court system in other states, as statutes and procedures regarding competency are different from state to state. Also, the perceptions of forensic examiners, indicating how

they conduct evaluations, how often they use FAI's and in what context, and their understanding of competency rules and procedures would be meaningful research in comparing what current practices are to what legal professionals are saying these practices provide to the court. It would also be interesting to look at the perceptions of defendants regarding competency evaluations, although the barriers to doing a study on this matter would be significant. It would be very important for future research to look at the reasons the perceptions of judges and district attorneys vary so greatly on many of these issues. As previously discussed, judges preferred local evaluations strongly, however, perceived OFC evaluations to be of overall better quality. DA's preferred OFC evaluations strongly; and also perceived OFC evaluations to be of overall better quality. Both DA's and judges had low perceptions of the validity of social workers' reports, with judges rating them lower than did DA's. Also, most of the criteria were believed to be important for including in reports always or often by over three-quarters of judges and DA's. However, the actual criteria in reports were perceived by these legal professionals as falling significantly short from what they perceived as optimal.

In sum, the perceptions of competency evaluations by all of those involved in the court system continue to be critical. All respondents perceived OFC evaluations as being of somewhat better quality, in most individual aspects and overall. The perceptions of judges appeared to differ from the perceptions of DA's in most aspects of evaluation quality, preference for location, and preference for the particular type of evaluator. Therefore, the legal community should work in tandem with those in the behavioral health community to attempt to find solutions to these problems. The legal community should also further investigate the reasons that various legal professionals differ in their

perceptions of evaluators and report quality. By doing so, we can learn of inherent bias that may exist and educate those professionals as to the proper methods for competency to stand trial assessments and report writing. Improved education of all involved in the evaluation process is also needed. Increased training for all examiners is important to ensure quality evaluations. The importance of various forensic assessment instruments for competency to stand trial assessments should be taught to evaluators, and perhaps a mentoring process should be implemented by legislative amendments to the competency statutory provisions. Guidelines and definitions regarding the issue of competency should be made more understandable to evaluators, to ensure determinations of competency are fair and as accurate as possible so that courts and juries receive optimal information to assist them in making these important decisions.

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APPENDIX A

SURVEY OF COMPETENCY TO STAND TRIAL

*****Do not write your name or any other identifying information on this form.*****

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

1. Please estimate the number of cases you have prosecuted in which the defendant was evaluated by a mental health professional during the last 3 years due to a question of the defendant's competency to stand trial: _____.

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

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

3. If you could choose, where would you prefer to have your competency to stand trial evaluations performed? (Circle a number.)

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

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

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

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

5. Over the past three years, the mental health evaluators there seem to be familiar with the appropriate legal criteria and issues. (Circle number for each category.)

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

6. Over the past three years, generally, the reports received for competency to stand trial evaluations have been understandable (clear language) rather than confusing (mental health jargon). (Circle number for each category.)

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

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

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

8. Over the past three years, the information contained within the reports received for competency to stand trial evaluations have been useful in assisting in the decision-making process for determinations of competency in the courts. (Circle number for each category.)

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

9. Please rank the overall quality of the competency reports you have received in the past three years.

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

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

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

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

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

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

_____ SOCIAL WORKER (masters level)
_____ PSYCHOLOGIST (PhD.)
_____ PHYSICIAN -PSYCHIATRIST (M.D. – D.O.)
_____ OTHER LICENSED MENTAL HEALTH PROFESSIONAL AS PROVIDED BY OKLAHOMA STATUTES

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

_____ SOCIAL WORKER (masters level)
_____ PSYCHOLOGIST (PhD.)
_____ PHYSICIAN SYCHIATRIST (M.D. – D.O.)
_____ OTHER LICENSED MENTAL HEALTH PROFESSIONAL AS PROVIDED BY OKLAHOMA STATUTES

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

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

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

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

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

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

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

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

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

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

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

k. DEFENDANT'S MEMORY
A O S R N

l. DEFENDANT'S CONCENTRATION
A O S R N

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

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

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

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

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

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

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

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

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

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

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

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

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

k. DEFENDANT'S MEMORY
A O S R N

l. DEFENDANT'S CONCENTRATION
A O S R N

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

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

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

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

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

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

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

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

t. DEFENDANT'S PLANNING OF LEGAL STRATEGY
A O S R N

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

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

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

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

y. DEFENDANT'S MEMORY
A O S R N

z. DEFENDANT'S CONCENTRATION
A O S R N

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

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

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

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

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APPENDIX B

SURVEY OF COMPETENCY TO STAND TRIAL

*****Do not write your name or any other identifying information on this form.*****

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

1. Please estimate the number of cases you have presided over in which the defendant was evaluated by a mental health professional during the last 3 years due to a question of the defendant's competency to stand trial: _____.

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

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

3. If you could choose, where would you prefer to have your competency to stand trial evaluations performed? (Circle a number.)

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

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

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

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

5. Over the past three years, the mental health evaluators there seem to be familiar with the appropriate legal criteria and issues. (Circle number for each category.)

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

6. Over the past three years, generally, the reports received for competency to stand trial evaluations have been understandable (clear language) rather than confusing (mental health jargon). (Circle number for each category.)

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

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

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

8. Over the past three years, the information contained within the reports received for competency to stand trial evaluations have been useful in assisting in the decision-making process for determinations of competency in the courts. (Circle number for each category.)

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

9. Please rank the overall quality of the competency reports you have received in the past three years.

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

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

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

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

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

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

_____ SOCIAL WORKER (masters level)
_____ PSYCHOLOGIST (PhD.)
_____ PHYSICIAN-PSYCHIATRIST (M.D. – D.O.)
_____ OTHER LICENSED MENTAL HEALTH PROFESSIONAL AS PROVIDED BY OKLAHOMA STATUTES

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

_____ SOCIAL WORKER (masters level)
_____ PSYCHOLOGIST (PhD.)
_____ PHYSICIAN -PSYCHIATRIST (M.D. – D.O.)
_____ OTHER LICENSED MENTAL HEALTH PROFESSIONAL AS PROVIDED BY OKLAHOMA STATUTES

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

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

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

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

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

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

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

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

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

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

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

k. DEFENDANT'S MEMORY
A O S R N

l. DEFENDANT'S CONCENTRATION
A O S R N

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

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

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

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

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

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

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

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

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

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

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

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

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

k. DEFENDANT'S MEMORY
A O S R N

l. DEFENDANT'S CONCENTRATION
A O S R N

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

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

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

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

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

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

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

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

t. DEFENDANT'S PLANNING OF LEGAL STRATEGY
A O S R N

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

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

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

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

y. DEFENDANT'S MEMORY
A O S R N

z. DEFENDANT'S CONCENTRATION
A O S R N

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

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

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

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

APPENDIX C

Graduate Programs

CENTER FOR HEALTH SCIENCES

Department of Forensic Sciences
1111 West 17th Street
Tulsa, Oklahoma 74107-1898
(918) 561-1108
Fax (918) 561-5729

April 17, 2008

First Name MI Last Name
Title
Organization
Address
City, State, Zip

Dear Respondent:

The enclosed survey has been designed to look at the perceptions of Oklahoma judges and attorneys regarding a person's competency to stand trial and at your satisfaction as a legal professional with the competency evaluations you may have received. As a graduate student at Oklahoma State University, Center for Health Sciences, I am collecting this information as part of the research requirements for the Master's degree in forensic sciences with an emphasis in forensic psychology. I would appreciate your participation in this very important study.

The attached survey will take only ten minutes of your time. Please complete the form and mail it in the enclosed envelope. Your individual answers will not be identifiable and will be used only for statistical data in the current research. By responding, you will greatly aid in assessing current satisfaction with competency evaluations performed in Oklahoma and in offering information to policy makers for improvement.

This project has the approval of the Internal Review Board at Oklahoma State University and, as indicated by the signature below, of Dr. Robert Allen, Director of the OSU Forensic Sciences program. If you have any questions or concerns about completing the survey or about being in the study, you may contact me at (405) 880-6597.

Upon completion of the survey, please return it in the self-addressed, stamped envelope provided. Drop the envelope in the mail by May 9, 2008. Thank you for your time. Your opinions will help to ensure that Oklahoma's criminal justice system remains fair and just.

Sincerely,

Leah Beth Fischer

Leah Beth Fischer, Graduate Student
Oklahoma State University-Center for Health Sciences

Robert W. Allen

Robert Allen, Ph.D., Program Director/Authorizing Administrator
Graduate Program in Forensic Sciences
Oklahoma State University-Center for Health Sciences

Enclosures

THE STATE'S UNIVERSITY

APPENDIX D

Oklahoma State University
Center for Health Sciences
College of Osteopathic Medicine

Institutional Review Board
FWA # 00005037

Memo

To: Leah Beth Fischer, BA
Forensics

Cc: Dr. Kathy LaFortune
Forensics

From: Stephen Eddy, D.O., M.P.H.,
Chairman, Institutional Review Board

Stephen Eddy, D.O. Exempt approval 2/18/08

Date: February 18, 2008

Re: **Exempt Approval of Protocol – IRB # 2008001**

Titled: **The Perceptions of Judges' and District Attorneys' on Competency to Stand Trial Evaluations in Oklahoma**

Board members of the OSU-CHS, Institutional Review Board (IRB), reviewed the above-named protocol and determined Protocol – IRB # 2008001 meets exempted criteria under federal guidelines, 45CFR 46.101 (b); therefore, you are free to begin the study.

If you plan to publish the results of your research, The International Committee of Medical Journal Editors (ICMJE) now requires trial registration at www.ClinicalTrials.gov as a condition for publication of research results.

The ICMJE's definition of a **clinical trial** is: "Any research project that prospectively assigns human subjects to intervention and comparison groups to study the cause-and-effect relationship between a medical intervention and a health outcome."

APPENDIX E

Table 1

Location where competency to stand trial evaluations are currently performed

Setting	Total %	Judge %	DA %
Locally	25.5%	30.67%	21.11%
At the Oklahoma Forensic Center	12.1%	6.67%	16.67%
Both Locally and at the Oklahoma Forensic Center	60.6%	60.00%	61.11%
Don't know	1.80 %	2.67%	1.11%

Table 2

Preferred location where competency to stand trial evaluations are performed

Setting	Fischer Judge	Fischer DA	Graham Def Atty	Graham & Fischer Total	1995
Locally	45.95%	23.60%	24.44%	31.73%	66.40%
At the OFC	22.97%	44.94%	35.56%	35.10%	9.30%
No preference either way	31.08%	31.46%	40.00%	33.17%	24.30%

Table 3

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

Setting	Graham & Fischer Total	Fischer Judge	Fischer DA	Graham Def Atty
Locally	37.02%	45.33%	30.34%	36.36%
At the OFC	28.85%	22.67%	33.71%	29.55%
No preference either way	34.14%	32.00%	35.96%	34.09%

Table 4

Judges' and District Attorneys' ratings of characteristics of reports completed by mental health professionals from different settings

	Setting							
	Local				OFC			
	Judges		DA's		Judges		DA's	
Report Characteristic	***M***	***SD***	***M***	***SD***	***M***	***SD***	***M***	***SD***
Reports are timely	4.18	0.86	3.56	1.14	4.00	0.92	3.94**	1.02
Examiners are familiar with legal criteria and issues	4.31	0.85	3.67	1.11	4.60*	0.53	4.36**	0.87
Examiners use understandable language	4.42	0.60	3.91	1.11	4.37	0.77	4.27**	0.79
Examiners give factual basis for conclusions	4.20	0.75	3.54	1.21	4.30	0.82	4.16**	0.90
Reports are useful in decision-making	4.42	0.60	3.87	1.16	4.48	0.76	4.43**	0.71
Overall Quality	3.94	0.75	3.24	1.20	4.23*	0.73	4.04**	0.79

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

Using student t-tests ($p<0.05$):
*Judge : OFC value is significantly different from local value
**DA: OFC value is significantly different from local value

Table 5

Judges' and District Attorneys' (2009), and Defense Attorneys' (2007) perceptions of quality of competency evaluations*

	Local				OFC			
Quality	**Judges**	**DA's**	**Def Atty**	**Total**	**Judges**	**DA's**	**Def Atty**	**Total**
Improved	16.18%	9.33%	5.56%	11.17%	20.00%	21.52%	7.41%	18.67%
Declined	2.94%	8.00%	11.11%	6.70%	00.00%	3.80%	25.93%	6.02%
Remained the Same	80.88%	82.67%	83.33%	82.12%	80.00%	74.68%	66.67%	75.30%

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

Table 6

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

	Judges				District Attorneys			
Professional Group	**First**	**Second**	**Third**	**Fourth**	**First**	**Second**	**Third**	**Fourth**
Psychiatrist (M.D. – D.O.)	58.90%	35.62%	5.48%	0.00%	48.86%	42.04%	5.70%	3.40%
Psychologist (Ph.D.)	40.30%	58.30%	0.00%	1.40%	48.84%	48.84%	2.32%	0.00%
Social Worker	0.00%	1.43%	51.43%	47.14%	2.35%	4.71%	49.41%	42.35%
Other Licensed Mental Health Professional as Provided by Oklahoma Statutes	1.41%	5.63%	43.66%	49.30%	3.61%	3.61%	43.37%	49.40%

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

Table 7

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

Defendant Characteristic	Always	Often	Sometimes	Rarely	Never	Mean
Appreciation of Charges*	85.1%	11.3%	3.5%	0%	0%	4.82
Appraisal of Key Figures in Court	26.6%	38.8%	23.7%	7.9%	2.9%	3.78
Understanding of Court Room Procedure	41.1%	32.6%	17.0%	9.2%	0%	4.06
Quality of Relating to Attorney	33.6%	30.0%	30.0%	6.4%	0%	3.91
Understanding of Attorney-Client Privilege	42.6%	22.7%	18.4%	12.8%	3.5%	3.88
Understanding Plea Bargaining Processes	19.9%	29.8%	29.1%	16.3%	5.0%	3.43
Planning of Legal Strategy	15.0%	28.6%	26.4%	23.6%	6.4%	3.22
Self Defeating Motivation	4.3%	14.5%	26.8%	35.5%	18.8%	2.50
Capacity to Disclose Pertinent Facts	31.2%	40.4%	21.3%	6.4%	0.7%	3.95
Capacity to Testify Relevantly	14.3%	29.3%	31.4%	17.9%	7.1%	3.26
Unmanageable Behavior	6.4%	20.6%	37.6%	27.7%	7.8%	2.90
Concentration	10.6%	22.0%	41.8%	20.6%	5.0%	3.13
Memory	12.1%	32.6%	30.5%	21.3%	3.5%	3.28
Thought Disorders	21.3%	29.8%	36.2%	12.1%	0.7%	3.59

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

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

Table 8

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

Defendant Characteristic	Always	Often	Sometimes	Rarely	Never	Mean
Appreciation of Charges*	73.9%	16.7%	8.0%	1.4%	0%	4.62
Appraisal of Key Figures in Court	25.2%	25.9%	28.1%	17.8%	3.0%	3.53
Understanding of Court Room Procedure	23.2%	36.2%	23.9%	13.8%	2.9%	3.63
Quality of Relating to Attorney	26.5%	21.3%	35.3%	13.2%	3.7%	3.54
Understanding of Attorney-Client Privilege	26.1%	20.3%	29.0%	18.1%	6.5%	3.41
Understanding Plea Bargaining Processes	8.8%	19.9%	36.8%	26.5%	8.1%	2.95
Planning of Legal Strategy	7.2%	19.6%	26.8%	35.5%	10.9%	2.77
Self Defeating Motivation	3.0%	15.8%	23.3%	40.6%	17.3%	2.47
Capacity to Disclose Pertinent Facts	18.1%	31.2%	32.6%	15.2%	2.9%	3.46
Capacity to Testify Relevantly	6.6%	22.8%	38.2%	25.0%	7.4%	2.92
Unmanageable Behavior	4.4%	18.5%	36.3%	31.9%	8.9%	2.78
Concentration	6.6%	20.6%	42.6%	26.5%	3.7%	3.00
Memory	10.9%	21.2%	46.0%	19.0%	2.9%	3.18
Thought Disorders	16.1%	29.2%	35.8%	16.1%	2.9%	3.39

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

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

Table 9

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

Defendant Characteristic	Always	Often	Sometimes	Rarely	Never	Mean
Appreciation of Charges*	97.4%	2.6%	0%	0%	0%	4.97
Appraisal of Key Figures in Court	40.9%	22.7%	24.0%	7.8%	4.5%	3.88
Understanding of Court Room Procedure	53.8%	21.8%	20.5%	3.2%	0.6%	4.25
Quality of Relating to Attorney	61.3%	20.6%	11.0%	3.9%	3.2%	4.33
Understanding of Attorney-Client Privilege	53.9%	21.4%	15.6%	5.2%	3.9%	4.16
Understanding Plea Bargaining Processes	42.3%	23.7%	24.4%	6.4%	3.2%	3.96
Planning of Legal Strategy	30.3%	21.9%	26.5%	12.9%	8.4%	3.53
Self Defeating Motivation	30.5%	16.9%	27.3%	14.9%	10.4%	3.42
Capacity to Disclose Pertinent Facts	72.4%	16.0%	10.3%	0.6%	0.6%	4.59
Capacity to Testify Relevantly	49.4%	23.1%	16.0%	7.1%	4.5%	4.06
Unmanageable Behavior	42.9%	21.2%	25.0%	7.7%	3.2%	3.93
Concentration	39.1%	23.1%	25.0%	9.0%	3.8%	3.85
Memory	48.7%	23.7%	19.9%	2.6%	5.1%	4.08
Thought Disorders	60.9%	22.4%	12.2%	2.6%	1.9%	4.38

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

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

Table 10

Perceived actual characteristics in OFC reports, local reports, and optimal frequencies as reported by Judges' and District Attorneys' in the current study

Defendant Characteristic	Actual OFC Mean	Actual Local Mean	Optimal Mean
Appreciation of Charges*	4.82	4.63	4.97
Appraisal of Key Figures in Court	3.78	3.53	3.88
Understanding of Court Room Procedure	4.06	3.63	4.25
Quality of Relating to Attorney	3.91	3.54	4.33
Understanding of Attorney-Client Privilege	3.88	3.41	4.16
Understanding Plea Bargaining Processes	3.43	2.95	3.96
Planning of Legal Strategy	3.22	2.77	3.53
Self Defeating Motivation	2.50	2.47	3.42
Capacity to Disclose Pertinent Facts	3.95	3.46	4.59
Capacity to Testify Relevantly	3.26	2.92	4.06
Unmanageable Behavior	2.90	2.78	3.93
Concentration	3.13	3.00	3.85
Memory	3.28	3.18	4.08
Thought Disorders	3.59	3.39	4.38

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

Table 11

Frequency of characteristics in reports as perceived by Judges' and District Attorneys' in the current study, and Defense Attorneys' in Graham's (2007) study

Defendant Characteristic	Actual Fischer DA Mean	Actual Fischer Judge Mean	Actual Graham Def Atty Mean	Optimal Fischer DA Mean	Optimal Fischer Judge Mean	Optimal Graham Def Atty Mean
Appreciation of Charges*	4.63	4.83	4.35	4.96	4.99	4.93
Appraisal of Key Figures in Court	3.68	3.63	3.77	3.75	4.03	4.43
Understanding of Court Room Procedure	3.82	3.88	3.74	4.26	4.23	4.57
Quality of Relating to Attorney	3.67	3.78	2.98	4.33	4.32	4.59
Understanding of Attorney-Client Privilege	3.52	3.79	2.79	4.15	4.17	4.55
Understanding Plea Bargaining Processes	3.36	3.01	2.67	3.96	4.03	4.41
Planning of Legal Strategy	3.08	2.90	2.28	3.61	3.43	4.20
Self Defeating Motivation	2.60	2.35	2.00	3.42	3.42	4.35
Capacity to Disclose Pertinent Facts	3.65	3.78	3.33	4.58	4.61	4.75
Capacity to Testify Relevantly	3.14	3.09	2.33	4.06	3.93	4.61
Unmanageable Behavior	2.90	2.78	2.35	3.85	4.03	4.53
Concentration	3.02	3.12	2.67	3.76	3.94	4.64
Memory	3.16	3.32	2.93	3.94	4.25	4.74
Thought Disorders	3.49	3.49	3.14	4.39	4.37	4.86

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

Table 12

Frequency of characteristics in reports as perceived by Judges and DA's in the current study and Defense Attorneys in the Graham (2007) study; compared to perceived frequencies in the 1995 study

Defendant Characteristic	Actual Judge, DA, & Def Atty Mean	Actual 1995 Mean	Optimal Judge, DA, & Def Atty Mean	Optimal 1995 Mean
Appreciation of Charges*	4.67	4.25	4.97	4.96
Appraisal of Key Figures in Court	3.67	2.94	4.00	3.89
Understanding of Court Room Procedure	3.81	3.29	4.32	4.07
Quality of Relating to Attorney	3.62	3.12	4.39	4.25
Understanding of Attorney-Client Privilege	3.53	2.74	4.25	4.05
Understanding Plea Bargaining Processes	3.13	2.46	4.06	3.90
Planning of Legal Strategy	2.90	2.31	3.68	3.31
Self Defeating Motivation	2.42	2.05	3.62	3.71
Capacity to Disclose Pertinent Facts	3.66	3.35	4.63	4.65
Capacity to Testify Relevantly	3.01	2.79	4.18	4.36
Unmanageable Behavior	2.77	2.80	4.06	4.28
Concentration	3.01	2.73	4.02	4.15
Memory	3.19	3.01	4.23	4.40
Thought Disorders	3.45	3.37	4.49	4.48

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

Table 13

Other elements Judges believe should be specifically addressed in the body of a competency report	
1	Will the defendant be able to understand what he has been told. If defendant can make a decision competently on what he's been told by anyone in the process.
2	Is defendant taking any medication or prescribed medication that he is not taking that may have a bearing on his ability to testify or to defend himself.
3	Degree of mental retardation or developmental disability.
4	When reporting on youthful offenders the case worker and psychologist need to do a better job of drafting their conclusions as to the subject's amenability or lack thereof to prosecution as a "juvenile," "youthful offender," "adult" and a review of resources the reporting party believes is available at each level of treatment / incarceration to effect the desired outcome.
5	The concern is only that the defendant be able to appreciate the charge against him/her and to be able to communicate reasonably with counsel. They need NOT be a paralegal.
6	Just the statutory information. If and when Oklahoma changes from McNaughton Rehab and diminished capacity then the other elements will be partial.
7	The degree to which a defendant is affected by mental or emotional disorders and whether or not condition is permanent.
8	3 axis orientation.
9	What treatment is necessary to maintain competency and how that treatment is to be provided once the defendant has been returned to the jail and/or community while awaiting trial.
10	The tests performed and outcome of those tests.
11	Give us all the information you can on the defendant's ability to assist his/her attorney. Also, need information on emotional stability and ability to relate to other people.
12	If incompetent; what it would take and how long to return the defendant to competency.
13	Health concerns such as head injuries, hearing, eyesight, etc. Deficiences. Medications taken – how long – how many changes in med. Protocol. How long and what past contact has person had with mental health system – ever been determined not competent in the past.

14	The defendant's ability to distinguish between right and wrong.
15	Past criminal history, prior medications taken for mental illness, prior hospitalizations for mental illness, history obtained from other family members, reports from school counselors and teachers.
16	Defendant's reaction to and relation with the evaluator.
17	The orientation of the defendant with regard to the event, the person's involved. Truthfulness. Intelligence level.
18	If not competent, whether likely to become competent – plan.

Table 14

Other elements District Attorneys believe should be specifically addressed in the body of a competency report	
1	Need to look at sub issues in the main issues of competency. I have done comp trials where talking to the doctor/workers gave much greater insight to defendant. Makes me wonder what I am missing when I just go off of report.
2	Prior MH history.
3	Defendant's psychotic state (or not); contact with reality. Defendant's understanding of his (or her) attorney's role and willingness to co-operate; mental vs. "pigheaded." Defendant's understanding of the range/severity of possible punishment. Retardation (is that all the "capacity" factors listed earlier?) Mental capacity to assist counsel (or try to assist).
4	Does defendant appreciate the difference between right and wrong. Is defendant able to assist his attorney in the preparation of his defense.
5	I am satisfied with the elements in current reports that answer the statutory requirements.
6	Malingering if present.
7	The danger posed to the public by the defendant who is mentally not competent and has drug/alcohol dependence and is charged with DUI. Competence evaluations concentrate on the danger a defendant poses from violent, uncontrollable acts and ignore the dangers posed by an incompetent person who repeatedly drinks and drives.
8	I am not sure what additional elements should be addressed, but the system needs to be able to consider that a defendant that understands and appreciates the charges still may not be competent. I see too many defendants that I have to move forward through the system that simply are not, or don't seem to be competent, which creates ethical problems for me. However, I realize the professionals are handling this in the manner prescribed by law.
9	Defendant's history, circumstances, surrounding the crime was he cognizant, intelligence level. Can easily deceive evaluator if interview only as evaluators. They lose credibility and become a laughing stock with the courts and lawyers. Generally jail staff not contacted, officers and others that observe the defendant at great length. General feeling of inmates, play dumb don't understand, ramble, you'll fool them most of the time. Causes the profession to lack credibility when they are so easily fooled, or are not objective.

10	Reports should always outline whether or not it is the belief of the evaluator that the defendant is malingering.
11	The defendant's ability to assist in his or her own defense.
12	Whether the person is a danger to himself or others. Whether there are facilities available for him/her to attain competency.
13	Defendant's understanding of potential outcomes, both favorable and unfavorable.
14	Can they / are they faking their behavior to avoid prosecution. How certain disruptive behaviors though odd do not arise to the level of legally incompetent to stand trial. (if applicable to the individual). If person upon 2nd evaluation becomes incompetent or competent explain why and how.
15	Any previous history of mental illness including inpatient, outpatient, and meds. Ability to understand right and wrong and consequences.
16	Mental health history of defendant. Any proof of malingering.
17	Evaluators should have access to defendant's prior criminal record. Many times defendant will feign incompetent when faced with serious charges or increased punishment for prior felony convictions when they have never alleged incompetent before.
18	The possibility of malingering. Prior physical and mental health history. Prescription and non-prescription drugs and their effect on defendant's case.
19	Would like to see all evaluations include a test for malingering and the results of that test. Would like a brief breakdown of medication patient is taking and the effects on the individual as well as the effects on test results.
20	Where defendant will go and what the defendant will do – if released without treatment / supervision.
21	The Basis for a finding rather than the finding without the basis for it!
22	(1) History – documented: mental health issues. (2) Educational level: documented. (3) Sources of information. (4) Directions provided by referrals and initiating party…who to contact and what to look at to make a fully informed opinion. (Sometimes critical parties, witnesses or reports are not provided to the evaluator). (5) Tests, if any which were administered.
23	A report, exclusively, can be misleading. On occasions or tough calls, a video of the defendant during the evaluation interview can provide the court and attorneys an incredible amount of information, i.e., the defendant's demeanor during interview.

Table 15

Further comments by Judges regarding competency evaluations	
1	Reports regardless of source, tend to use “canned” language. They tend to lack much elaboration to support the reported conclusion. PLEASE NOTE: I have been on the bench over X years. It is difficult to evaluate the last 3 years, and exclude the previous X.
2	The criteria you have identified in questions 14, 15, and 16 are quite valid. Improvements in evaluations may also be enhanced by carefully reviewing relevant published court decisions in this area.
3	All of the evaluations received in my two county areas are done by the forensic center in Vinita, OK. Rarely have I received a report of this kind from a local mental health professional, therefore, I did not answer questions as to a local.
4	OFC always testifies as a rubber-stamp for the state. They have never seen an incompetent (legally) patient. Obviously impaired persons are declared competent every time.
5	I have had the local evaluator testify that a particular defendant was both suicidal and homicidal, couldn’t assist his attorney in defending the case, but did not need treatment or therapy. Some of the evaluators need to be evaluated themselves.
6	I just received a competency evaluation on a criminal defendant that concluded the subject was competent, had no mental illness, and could aid in his defense and was not a threat. I have known this subject for 40 years as have many in this community and it was unanimous, until this report, he is and has for a long time been mentally ill. How can this be?
7	It would take a zombie to be determined incompetent.
8	I seldom differentiate between locally proposed and reports from OFC.
9	Whether or not evaluation is done locally often depends upon other considerations besides quality of evaluation. For instance any propensity toward violence. Locals often don’t want to do that.

10	Speed up process – usually takes 30 days from time appointment made to report received. OFC is understaffed but does quality work. Would love to have a qualified person locally to do these. We've tried, but it failed miserably.
11	Oklahoma Forensic Center is slow – until they decide the want someone out – then they move with speed. Makes one wonder about their evaluations.
12	We need more local evaluators.
13	In general I'm very pleased with the thoroughness and professionalism shown in both doing and reporting competency evaluations.
14	I serve in 2 counties. The local provider is the same for both. The quality of the work varies greatly between the 2 counties.
15	The procedure to get a defendant into the forensic center is too time consuming. There is a wall about getting someone in rather than admitting and determining.
16	The reports, especially those generated locally, are often elementary and oversimplified. This is a direct outcome of the lack of professional qualifications of those preparing these reports, as they can only implement the tools they were trained on. While this is appropriate for these reporters – they should not express opinions they are not qualified to give – it results in superficial analyses that do not always address the actual underlying problem which led to the order for evaluation.
17	For very difficult cases, it is good to have the Forensic Center at Vinita available for a detailed evaluation.
18	I am continually amazed that those who appear to be incompetent that are found competent and vice versa. If the defendant is on medication many times by the time we get the defendant to trial they are off their medication and are suffering from some mental illness after we have gone all through the competency process. We need to see that the defendant is on given any prescribed medication on a timely basis.
19	The concern is always whether the evaluator is giving a credible evaluation of competency or giving an evaluation to satisfy the needs of the person paying for the examination. Too often so-called experts regurgitate conclusions based on monies paid. What I want to know is whether the defendant is competent or not.
20	Almost All evaluations are requested by defense attorney who is covering him/her self on questions with ineffective assistance of counsel.

Table 16

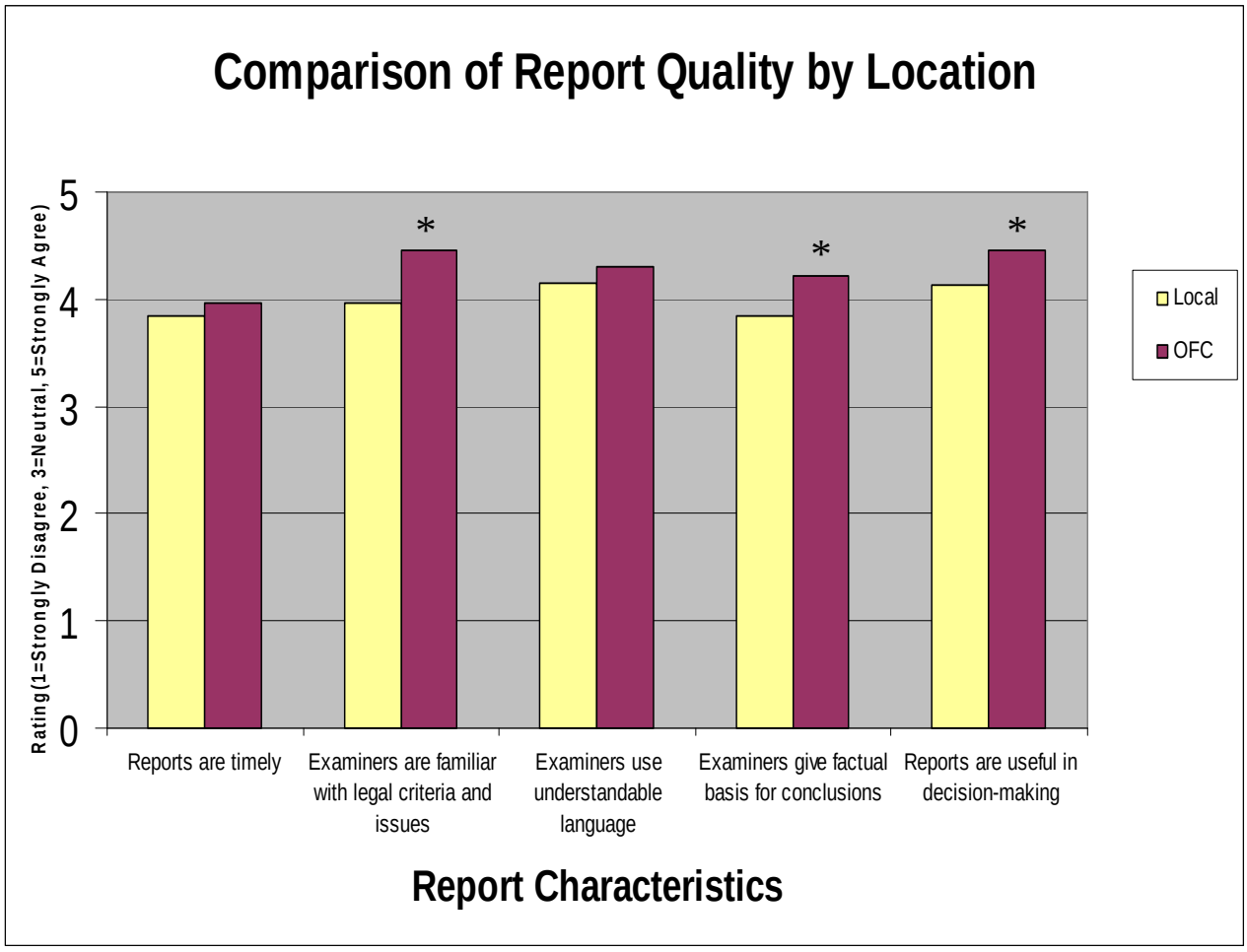
Further comments by District Attorneys regarding competency evaluations	
1	Needs more info on how you got to your determination.
2	It is my opinion that the local evaluators take at face value whatever the defendant says, resulting in too many findings of "incompetent to stand trial," which leads to prosecutors having a tendency to doubt all their evaluators.
3	It is very difficult if not impossible for me to remember the specific differences in reports submitted by local facilities as opposed to reports submitted by the Oklahoma Forensic Center.
4	Sorry, I've never had a competency eval done locally. Mine are always done in Vinita at the OFC.
5	I assume you have the statutory reference, but since you are with OSU, I have included it with my response. BOOMER SOONER!
6	The statutory requirements are valuable, but often allow questionable results. My experience is that the evaluations are a good tool to weed out those defendants feigning incompetence, but sometimes miss the obviously incompetent. The instance may be rare, but my experience is that everyone knows of a defendant that has been evaluated and found competent but who just cannot be. That defendant gets no treatment and is convicted. Good luck – the system is not broken, it just needs fine tuning.
7	The main problem I have had with evaluations is the definition of Dangerous. Title 43A section 1-103(18) and the numerous evaluations that list a "qualified" answer to this question. I have an issue with answer that states he is not Dangerous, however I recommend no contact with children under 18. If the recommendation is no contact then it is based on a threat of harm to that group and should be classified as Dangerous.

8	I have a case in which an elderly man is charged with lewd molestation of his grand-daughters. This has gone to jury trial (the issues of competency) twice in the last year with the defendant being found competent both times. I have two main problems with "Vinita's comp. Evaluations." My main bitch is that the evaluations try to qualify some of their conclusions. One question, which must be answered, is whether an individual is "dangerous." The two "doctors" answered with a "Qualified No" even though this defendant is a 3 time pedophile and was currently preying on other residents at his nursing home. One doctor said people should expect to be sexually assaulted at a nursing home. I also think many comp. evals have conclusions which are based upon available bed space for the mentally ill, this is legally and ethically wrong. I wish you luck in joining this field.
9	I don't know what the Oklahoma Forensic Center is or where it is located. To my knowledge we have never used it.
10	Overall very poor evaluations, generally find incompetent, defendants locally know they can easily fool the evaluator. Near always reversed when properly evaluated at Eastern State. Too much of evaluation is subjective and based solely on interview instead of defendant's overall history. Local evaluators find one incompetent if they fake lack of understanding, this well known with defense bar.
11	The accuracy of some reports suffers due to short/insufficient contact with the defendant. One assessment session of 1 to 2 hours often isn't enough to see all aspects of a defendant's behavior, especially those whose grip on reality or ability to "hold it together" comes and goes over time.
12	I would like to see personal opinions of evaluators on whether defendants are malingering or actual suffer from a mental illness bur are competent (legally). In other words, I would appreciate some input on what the defendant's needs are and the best way to deal with their case.
13	It seems like in the last few years (might be longer) the reports from the Oklahoma Forensic Center in Vinita have improved dramatically. The evaluations appear to be very well done. When needed the testimony has been good. Overall the testament to the improvement is in my experience shown by the courts, the defense attorney and prosecutors who often feel very comfortable with the reports.
14	I have seen no significant difference in the 2 types of exams.
15	Timely evaluations need to be done and the same person needs to again evaluate b/c they would be in the best position to explain any changes. Be conscious of state evaluations if called to testify and request a 2nd more timely evaluation. Be cognoscente of who is writing up the report is who evaluated. It matters when it's put before a jury. Don't sign off on or write a report as if you yourself evaluated the person when in fact you didn't.

16	The bottom line is the need for more qualified examiners.
17	Often evaluations seek to qualify their answers to the competency questions. The qualifying remarks tend not to be helpful. For example: “defendant seems to understand courtroom procedures generally, however, because of this etc., the defendant may…” Such vague remarks undermine the validity of the evaluator’s opinion, and generally not helpful to tier of fact, judge or jury.
18	The local providers vary based on who they have to do the evaluations. They seem to place them on a relatively low priority and have even showed up to do evaluations at the jail after midnight.
19	Evaluators should have access to arrest reports and investigations on current pending charges. There may be actions or statements by defendant contained in police investigative file that would help evaluator determine if defendant is malingering or not. Further, evaluators should talk to local jailors to discuss defendant’s behavior prior to evaluation and obtain copies of any correspondence defendant generated prior to evaluation.
20	1. They just take too long. 2. I feel the evaluation is based too much of defendant’s word/version. I furnish additional materials for the evaluation (when I can identify the assigned professional).
21	Of course I want ultimate issue determined – understanding of nature of crime charged; ability to consult with attorney; knows right from wrong. Would be helpful if evaluator gave opinion concerning any mental deficiency of defendant.
22	Main problem with the present system is the length of time it takes to get a competency evaluation performed.
23	Suspiciously, some defendants “become competent” for no reason near the 2-year deadline. Ordered re-evaluation often results in a new finding of incompetence. This seems odd.
24	Competency evaluations are a joke today. 1st of all, it takes months and months to even get someone evaluated. They rot in jail until that time! We, in Oklahoma, totally fail the mentally ill!
25	Evaluators need more training differentiating between sanity and competency. Additionally, new criteria needed for evaluating mentally handicap.
26	I have been a defense attorney, I am now a prosecutor, so I have seen it from both sides. To me it is an abuse of the system to fill a person up with drugs so he/she is docile, and then pronounce them competent to stand trial when they cannot carry on a conversation.

27	Nearly all defendants that have the competency issue raised, have some to substantial history of mental health committals, detentions, treatment and evaluations. Most if not all have rendered evaluations, opinions, and diagnoses that are not disclosed due to privacy restrictions – but would be most helpful for the state defense and court to know when addressing the initial issue of whether there is reason to doubt competency of defendant to undergo criminal proceedings. The many months – up to years (of delay that can be caused by competency issue -) and ultimate "malingering" diagnosis – could be avoided by mental health professionals / providers being less restricted by privacy concerns, policy and laws. Forensic examination – training / experience is very valuable. Not all psychologists / psychiatrists are reliable to provide an unbiased examination and report. MHSAD – forensic training of "other licensed mental health professionals" has helped.
28	Generally, the forensic center spends less than a few hours with the client. Not enough time to determine if client is malingering.
29	Many of your questions in 14-17 are irrelevant. The standard is can the defendant appreciate or understand the nature of the charge and assist his attorney. His quality of understanding and trial strategy are non-sense. Mentally disturbed people often know exactly what they are doing and then try to use their diagnosis as a defense.
30	Too many defendants become situationally incompetent when facing serious charges. These defendants are a burden on the mental health facilities in our state. Defense attorneys (and the courts) should do a better job at gate keeping those in need of competency evaluations. As it stands today every Tom, Dick and Harry can become incompetent, if not at least for a little while.

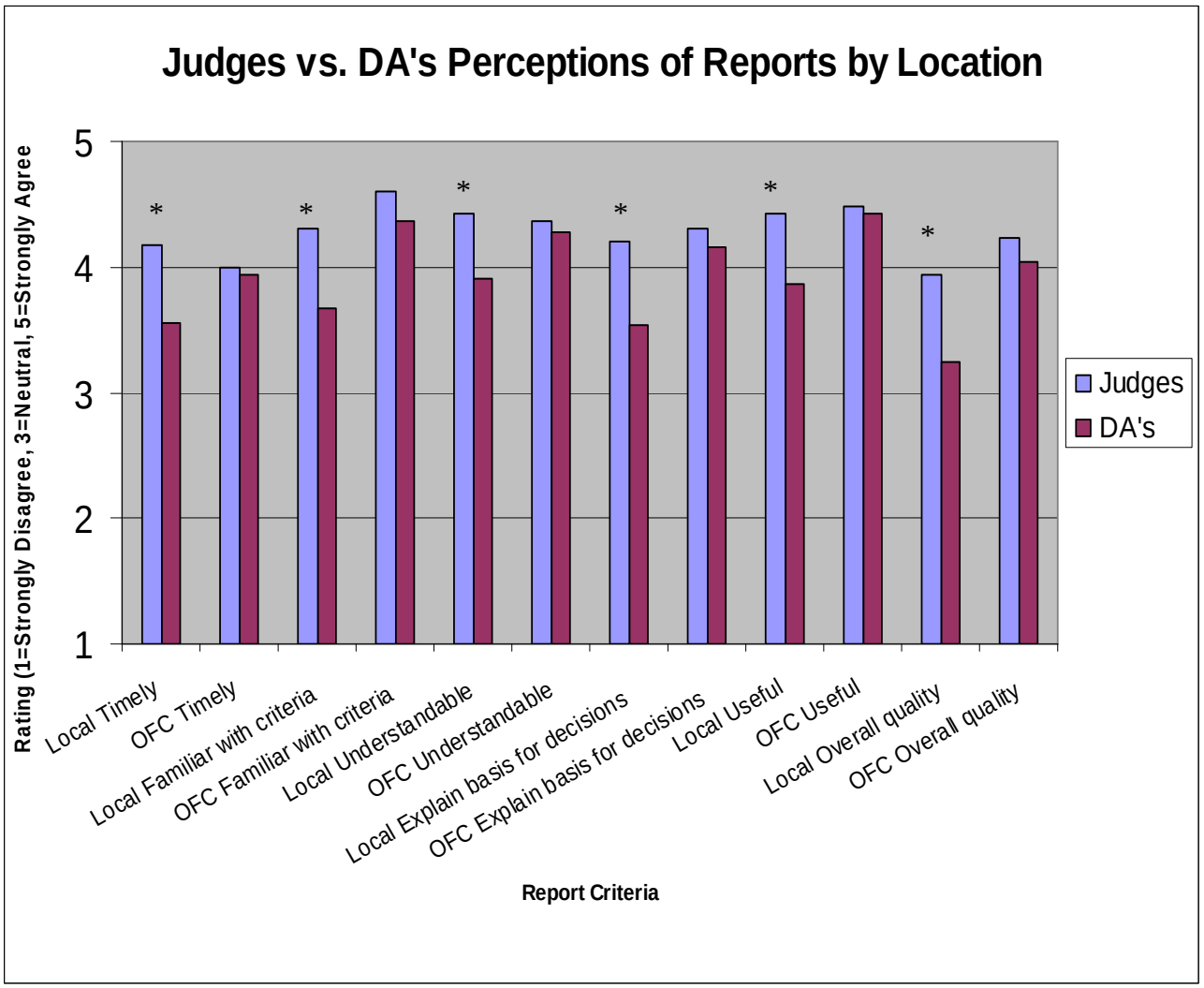
Figure 1



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

*OFC value significantly different from Local value.

Figure 2



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

*Local: Judge rating was significantly different from DA rating.

No difference between OFC values.

Figure 3

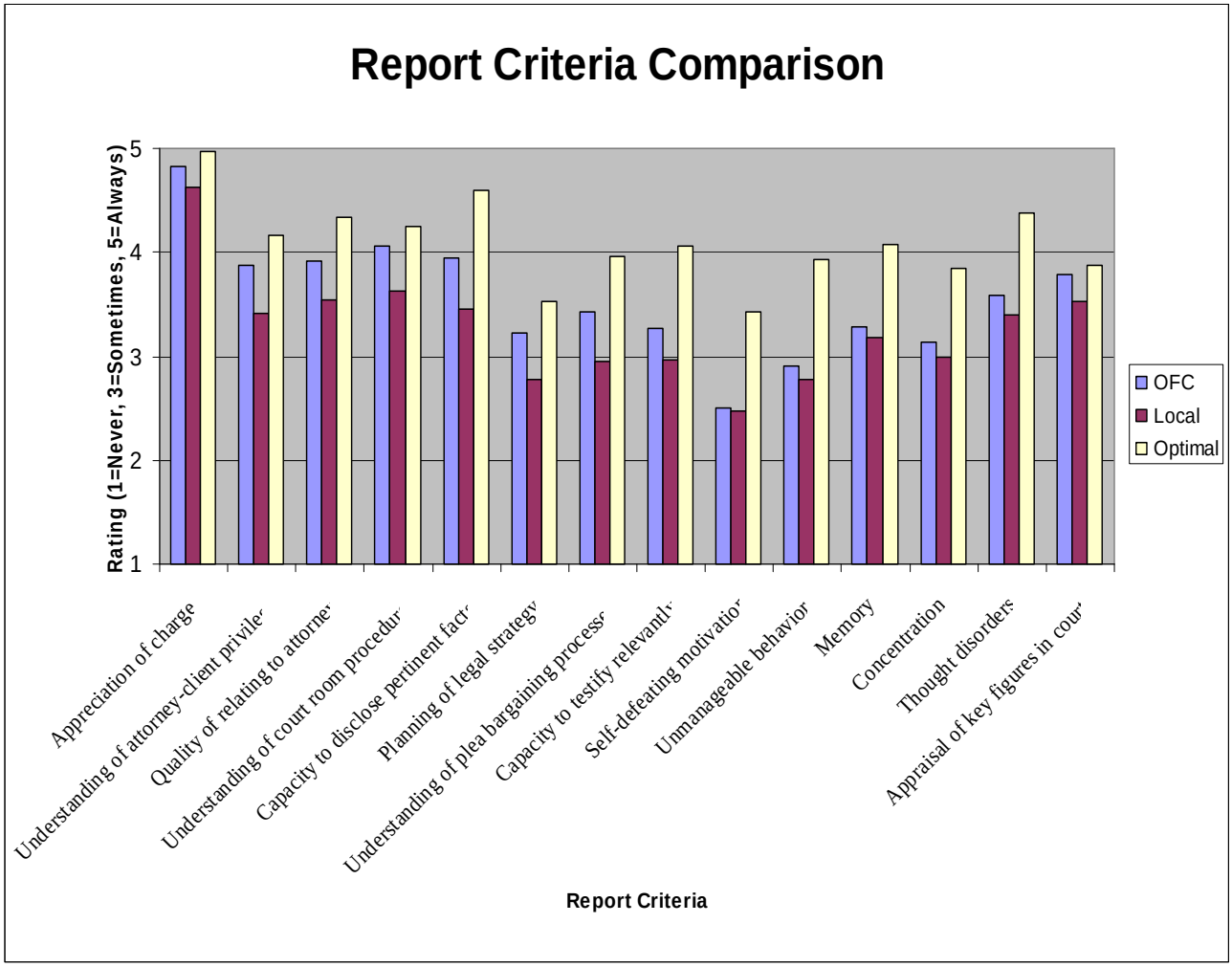
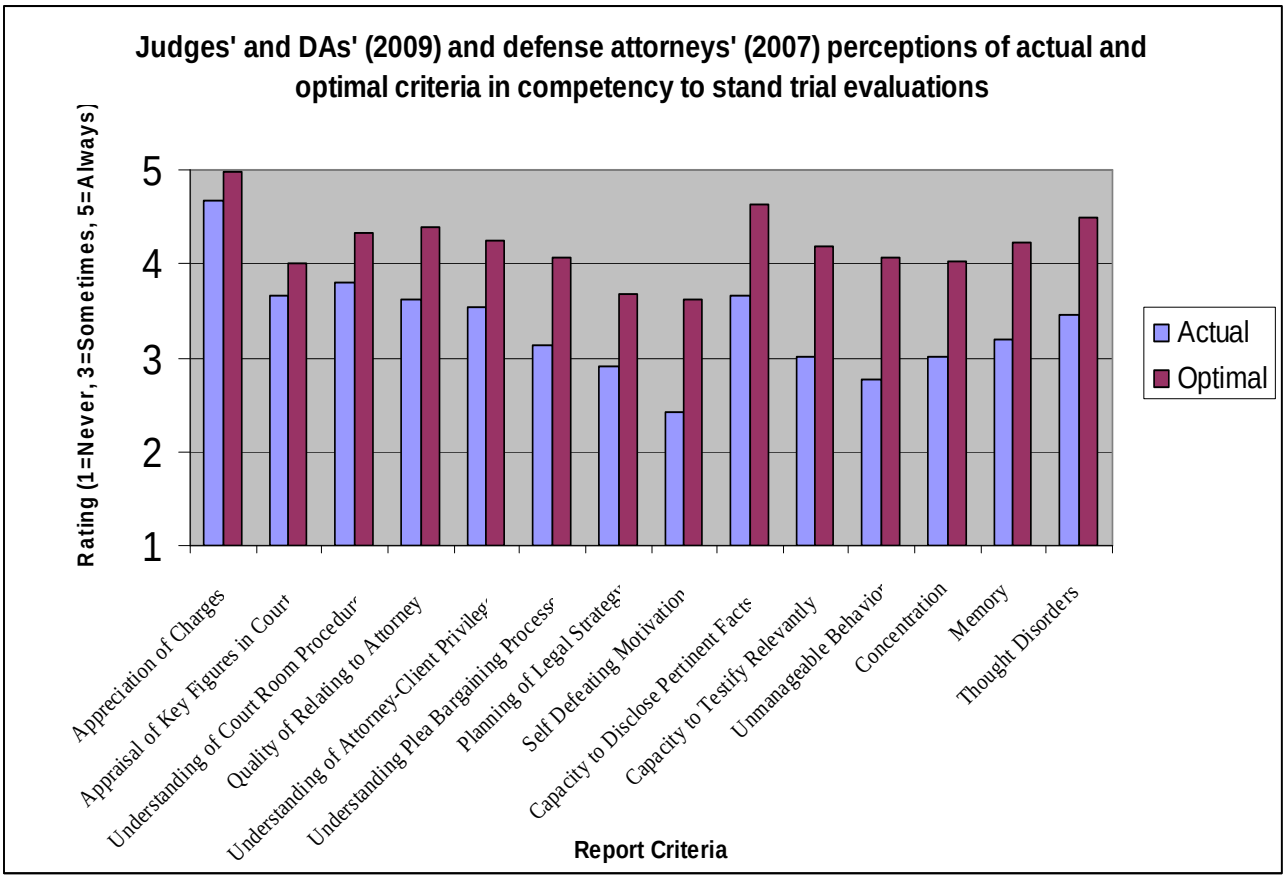

Report Criteria Comparison
Rating (1=Never, 3=Sometimes, 5=Always)
5
4
3
2
1
OFC
Local
Optimal
Appreciation of charge
Understanding of attorney-client privile
Quality of relating to attorne
Understanding of court room procedur
Capacity to disclose pertinent fac
Planning of legal strateg
Understanding of plea bargaining process
Capacity to testify relevantl
Self-defeating motivatio
Unmanageable behavior
Memory
Concentration
Thought disorders
Appraisal of key figures in cour
Report Criteria

Figure 4



Using student t-tests ($p<.05$):

All actual values were significantly different from optimal values.

VITA

Leah Beth Fischer

Candidate for the Degree of

Master of Science

Thesis: JUDGES' AND DISTRICT ATTORNEYS' PERCEPTIONS OF COMPETENCY TO STAND TRIAL EVALUATIONS IN OKLAHOMA

Major Field: Forensic Sciences

Biographical:

Personal Data:	Born in La Junta, Colorado on May 10, 1983, the daughter of Milton and Judy Fischer.
Education:	Graduated from Arkansas City Christian Academy in Arkansas City, Kansas, in May, 2001; received Associate of Arts degree in Psychology from Cowley County Community College in Arkansas City, Kansas, in December, 2003; received Bachelor of Arts degree in Psychology from Oklahoma State University in Stillwater, Oklahoma, in December, 2004. Completed the requirements for the Master of Science degree at Oklahoma State University Center for Health Sciences with a major in Forensic Psychology in May, 2009.

Name: Leah Beth Fischer Date of Degree: May, 2009

Institution: Oklahoma State University Location: Tulsa, Oklahoma

Title of Study: JUDGES' AND DISTRICT ATTORNEYS' PERCEPTIONS OF COMPETENCY TO STAND TRIAL EVALUATIONS IN OKLAHOMA

Pages in Study: 100 Candidate for the Degree of Master of Science

Major Field: Forensic Sciences

Scope and Method of Study: The purpose of this study was to examine Oklahoma judges' and district attorneys' perceptions of competency to stand trial evaluations. Participants in this study were 165 judges and district attorneys from all counties in the state of Oklahoma. More specifically, 75 judges and 90 district attorneys from the state of Oklahoma participated in this study. Each participant completed a survey which was mailed to them on Oklahoma State University Center for Health Sciences letterhead, with a self-addressed stamped envelope included to facilitate a return response. Descriptive statistics (including percentages, means, and standard deviations) were used to test the hypotheses.

Findings and Conclusions: Similar to the results found by Graham (2007), there was no strong preference for setting (Oklahoma Forensic Center v. local) to perform competency to stand trial evaluations. However, when the two legal professionals were separated and compared, judges showed a preference for local evaluations, and district attorneys showed a preference for evaluations completed at OFC. Despite preferring their evaluations to be done locally, judges rated evaluations completed at OFC higher overall than those evaluations completed locally. Judges and district attorneys' believed the quality of evaluations has remained the same over the past 3 years for both local and OFC evaluations. There showed to be a strong preference for psychiatrists and doctoral level psychologists over social workers and other licensed mental health professionals to complete evaluations. Judges and DA's continue to perceive competency reports are lacking in information necessary to effectively determine a defendant's competency.

ADVISER'S APPROVAL: Dr. Kathryn A. LaFortune