

Running head: ANSWERING THE ULTIMATE LEGAL QUESTION

**Answering the Ultimate Legal Question: A Survey of Lawyers and Psychologists**

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**Table of Contents**

LIST OF TABLES.....	iv
LIST OF FIGURES.....	v
ABSTRACT.....	vi
1. RULES, GUIDELINES, AND STANDARDS ON ULTIMATE ISSUE OPINIONS.....	2
2. FORENSIC MENTAL HEALTH ASSESSMENTS.....	3
2.1 Risk Assessments.....	3
2.2 Juvenile Risk Assessments.....	4
2.3 Ultimate Opinions in Reports and Testimony.....	5
3. CURRENT STUDY.....	7
3.1 Hypotheses.....	8
4. METHOD.....	9
4.1 Participants.....	9
4.2 Measures.....	12
4.3 Procedures.....	13
5. METHOD OF ANALYSIS.....	13
6. RESULTS.....	14
6.1 Analyses of Primary Hypotheses.....	14
6.2 Analyses of Secondary Hypotheses.....	15
6.3 Analyses of Exploratory Hypotheses.....	16
7. DISCUSSION.....	18

7.1 Implications.....	24
7.2 Limitations.....	27
7.3 Conclusions.....	29
LIST OF REFERENCES.....	31
APPENDIX A: TABLES.....	36
APPENDIX B: FIGURES.....	39
VITA.....	42

**List of Tables**

1. Number of Participants by Condition and Profession.....	36
2. Mean (SD) Scores for Profession x Extent of Ultimate Issue Opinion Conditions...	36
3. Post-Hoc Results: T-test Comparisons of Ratings of Appropriateness by Context and Extent of Opinion.....	37
4. Post-Hoc Results: Relationship between Profession and Flexibility of Approach to Offering Ultimate Issue Opinions.....	37
5. Post-Hoc Results: Relationship between Profession and Responsibility.....	38

**List of Figures**

1. Percentage of participants with experience conducting or requesting various types of forensic mental health evaluations.....39
2. Mean appropriateness ratings by extent of ultimate issue opinion and context.....40
3. Percentage of participants reporting that ultimate issue opinions should be offered never, sometimes, or always as a function of profession.....40
4. Percentage of participants rating judge, evaluating psychologist, neither, or both as responsible for a negative outcome following a decision based on a forensic mental health evaluation report as a function of profession.....41

## Abstract

Answering the Ultimate Legal Question: A Survey of Lawyers and Psychologists

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There is no clear consensus among forensic mental health experts regarding whether and when ultimate issue opinions (i.e., those opinions that directly answer a legal question) should be offered in forensic mental health reports. Although lawyers and other legal actors are often cited as having a strong preference for ultimate issue opinions, these views have not been directly compared to those of mental health experts. This study examined lawyers' and psychologists' beliefs about ultimate issue opinions in juvenile and adult contexts using an experimental survey design. Data from 186 participants revealed that these two professions approach forensic mental health reports in different manners. Although both professions viewed the appropriateness of ultimate issue opinions similarly, lawyers had a preference for ultimate issue opinions in all cases. Regarding context, ultimate issue opinions in juvenile cases were identified by both professions as less appropriate than ultimate and penultimate opinions offered in an adult criminal context. Future research may focus on obtaining data involving a more thorough forensic mental health report, comparing additional contexts, and obtaining a wider sample that includes judges and potential jurors as well. Implications concerning the relationships between lawyers and retained mental health experts and the use of ultimate issue opinions in juvenile and adult contexts are discussed.





### Answering the Ultimate Legal Question: A Survey of Lawyers and Psychologists

A highly debated issue among forensic mental health experts is the question of whether clinicians should provide ultimate issue opinions (e.g., Fulero & Finkel, 1991; Heilbrun, 2001; Tillbrook, Mumley, & Grisso, 2003). Some mental health professionals choose to answer ultimate legal questions in the context of forensic mental health evaluations by providing conclusory statements framed in the terminology of the specific legal standards before the courts, such as providing an opinion that a defendant is competent to stand trial (Melton, Petrila, Poythress, & Slobogin, 2007). Rather than answering the ultimate legal issue directly, some forensic mental health professionals choose to address the penultimate legal issue by providing conclusions about the psycho-legal capacities required to meet legal criteria, such as clinical information about a defendant's abilities to understand the proceedings and assist counsel (Heilbrun et al., 2002).

On the one hand, courts and attorneys seek and expect psychologists to provide ultimate issue opinions (Melton et al., 2007) to bolster the expert's credibility and limit confusion that may result from refraining to provide an opinion on the ultimate legal issue (Poythress, 1982). Proponents of providing ultimate issue opinions argue that clinical judgments cannot be separated from observations, and ultimate issue opinions are an inevitable component of forensic mental health assessments (Rogers & Ewing, 1989). However, the ultimate issue is a legal question that forensic mental health experts may not be qualified to answer. It encompasses legal and moral values that some psycho-legal scholars believe are beyond the scope of a forensic mental health professional's expertise (e.g., Melton et al., 2007; Morse 1978a, 1982b). These scholars believe the court is the

appropriate party to make the ultimate legal decision, rather than the evaluating psychologist (Melton et al., 2007).

### **Rules, Guidelines, and Standards on Ultimate Issue Opinions**

Various guidelines and standards have been developed to help address when it is appropriate for psychologists to offer ultimate issue opinions. The American Psychological Association's (APA, 2002) *Ethical Principles of Psychologists and Code of Conduct* does not provide explicit rules for or guidance on how to handle ultimate issue opinions. However, specialty guidelines have been developed that recognize the issue. For example, the *Specialty Guidelines for Forensic Psychologists* encourage "forensic practitioners...to explain the relationship between their expert opinions and the legal issues and facts of the case at hand" (APA, 2011, p. 15) and the *Guidelines for Child Custody Evaluations in Divorce Proceedings* urge psychologists to be aware and capable of explaining their own practices regarding ultimate issue opinions (APA, 1994). From a legal perspective, the American Bar Association developed *Criminal Justice Mental Health Standards* (1989) which recommend that opinions encompassing specific legal criteria should be admissible when the opinion falls within the expert's area of specialized knowledge and would assist the trier of fact. Generally, legal questions are to be answered by the trier of fact under common law. The Federal Rules of Evidence (FRE) further codify this principle. FRE 704 (b) states, "no expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or a defense thereto...." Outside of the federal jurisdiction, admissibility of this type of evidence may depend on the type

of assessment conducted (Heilbrun, Marczyk, & DeMatteo, 2002). Often, judges may determine, within the scope of the controlling rules of evidence, whether to allow ultimate issue opinions (Heilbrun, Marczyk, & DeMatteo, 2002; Parry, 2009).

### **Forensic Mental Health Assessments**

A forensic mental health assessment (FMHA) is a specialized evaluation conducted for attorneys or the courts by mental health professionals (Heilbrun et al., 2002). These evaluations serve as tools to inform legal decision making or assist in the representation of a client (Heilbrun et al., 2002). Forensic mental health assessments may address questions in civil, family, or criminal law contexts (Heilbrun et al., 2002). Civil assessments may include assessments of mental injury, guardianship, or other civil competencies. Child custody evaluations are the primary forensic mental health assessment conducted in the area of family law. Competency (to stand trial, plead guilty, waive the right to counsel, or be sentenced) evaluations, mental state at the time of the offense evaluations, and risk/violence assessments are common within the criminal law context. Each of these assessments involves an evaluation of the relevant psychological capacities needed to fulfill the specific legal requirements.

### **Risk Assessments**

Risk assessment involves identifying risk and protective factors that impact the likelihood of future criminal conduct (Slobogin, 2013). Factors relevant to a determination of risk include both static and dynamic factors. Static factors are those that are unchangeable, whereas dynamic factors are alterable (Slobogin, 2013). Techniques for conducting risk assessments include unstructured clinical assessment, actuarial assessment, and structured professional judgment (Hart, 2009). Because of evidence that

unstructured clinical judgments have limited accuracy, the use of risk assessment tools is encouraged (Hanson & Morton-Bourgon, 2009; Lidz, Mulvey, & Gardner, 1993). Risk assessments are relevant in both juvenile delinquency and adult criminal contexts (Slobogin, 2013) and can be used to inform a variety of legal decisions within these contexts, such as sentencing, pretrial detention, and transfer to adult court (Viljoen, McLachlan, & Vincent, 2010).

### **Juvenile Risk Assessments**

The frequency of formal risk assessments in juvenile court contexts has increased during the past two decades, with more than 85% of juvenile court jurisdictions utilizing risk assessments at some point during the juvenile court process (Schwalbe, 2008). Additionally, although 75.4% of surveyed clinicians reported always or almost always using risk assessment tools when conducting adult risk assessments, 61% reported always or almost always using such tools for juvenile risk assessments (Viljoen, McLachlan, & Vincent, 2010). Despite improvements in risk assessment instruments for adults (Yang, Wong, & Cold, 2010), risk assessment tools for juveniles continue to have lower rates of accuracy (Schwalbe, 2007).

Risk assessments of juveniles are more complicated than risk assessments of adults for several reasons, but, perhaps most importantly, youth can change profoundly in brief periods of time (Slobogin, 2013). Factors that may serve as strong predictors of risk at one age may diminish in importance or relevance with time (Steinberg & Schwartz, 2000). For example, aggression during preadolescence is strongly related to future violence risk, whereas this risk diminishes if aggression first appears in later adolescence (Steinberg & Schwartz, 2000).

In the context of risk, lawyers and courts tend to focus on degree of “dangerousness” (Slobogin, 2013), a term that has escaped precise definition (Melton et al., 2007). Mental health professionals, in contrast, tend to focus on the factors related to reoffending and the interventions that can reduce the impact of those factors and, therefore, lessen risk (Slobogin, 2013). Compared to adult risk assessment reports, mental health experts more frequently identify protective factors, treatment recommendations, recommendations to reevaluate risk, and limitations of their judgments in juvenile risk assessment reports (Viljoen, McLachlan, & Vincent, 2010). In both juvenile and adult contexts, few mental health experts report including explicit recommendations about the ultimate legal issue in their reports (Viljoen, McLachlan, & Vincent, 2010).

### **Ultimate Opinions in Reports and Testimony**

There has been limited empirical evidence on the frequency of ultimate opinions and their impact (Heilbrun, Marczyk, & DeMatteo, 2002). However, extant research has scratched the surface by examining both reports and practitioners’ beliefs concerning the role of ultimate opinions in forensic mental health evaluations.

Despite recommendations to refrain from directly answering the ultimate legal issue (Heilbrun, 2001), psychologists continue to provide such ultimate opinions in reports. A majority of surveyed psychologists believed that providing the ultimate opinion is an essential component of a juvenile forensic evaluation (Ryba, Cooper, & Zapf, 2003). Similarly, a majority of surveyed psychiatrists believed ultimate opinions were an essential component of competency (67%) and criminal responsibility (59%) evaluations (Borum & Grisso, 1996). Examination of forensic mental health reports in

the mid-1990s revealed that, in actual practice, 95% of reports in community settings and 99% of reports in hospital settings included ultimate issue opinions (Heilbrun & Collins, 1995). More recently, 69.6% of forensic mental health reports addressing competence to stand trial or hospitalization included answers to the ultimate legal questions (Lander, 2006), and 72% of child custody reports contained this information (Zelechowski, 2009). In jurisdictions that require ultimate opinions, rates of including ultimate opinions in reports are likely to be higher (Christy et al., 2003). Notably, the likelihood that a mental health expert will provide an ultimate opinion decreases as their experience increases (Warren et al., 2004).

Beyond psychology practices, judges and attorneys tend to prefer ultimate issue opinions from mental health experts. Judges and attorneys reported that descriptive and ultimate issue opinions are more important and more valuable than testimony on relevant statistical or actuarial data or testimony on the relationship between clinical and legally relevant behavior (Poythress, 1981; Redding, Floyd, & Hawk, 2001). In fact, judges ranked ultimate issue opinions second only to descriptive testimony as the most probative evidence experts can provide (Melton et al., 2007). Experience plays a similar role for attorneys as it does for mental health experts: ultimate issue opinions become less important as attorneys' experiences with mental health issues in legal settings increases (Redding, Floyd, & Hawk, 2001).

The varying demands and characteristics of each type of forensic mental health assessment may drive a forensic mental health professional's decision-making process about whether to answer the ultimate legal question. In some types of assessments, the forensic mental health professional may be more wary of addressing the ultimate legal

issue, but lawyers and judges may view it as acceptable or even required (Melton et al., 2007).

### **Current Study**

Although practice standards caution against providing ultimate issue opinions, ultimate issue opinions in forensic mental health evaluations appears to continue to be offered across legal questions (e.g., Heilbrun & Collins, 1995; Lander, 2006; Zelechowski, 2009). Actors within the legal field may exert additional pressure on mental health professionals to provide ultimate issue opinions despite professional cautions against providing these opinions (Melton et al, 2007). Given the lack of consensus among mental health professionals, it is important to identify how psycho-legal actors provide and perceive the value of ultimate issue opinions.

Determining whether lawyers and psychologists differ on their views of ultimate issue opinions may help identify possible reasons for the discrepancies in attitudes about ultimate issue opinions. This information may help guide and reduce inconsistencies in expectations between the two fields, and, more specifically, between referring attorneys and retained mental health experts. Additionally, evaluating ultimate issue opinions in adult and juvenile risk assessment contexts provides an opportunity to examine whether differences exist in approaches employed within these two contexts. Exploring the reasons behind the legal push for ultimate issue opinions may help psychologists identify ways of meeting the needs of the legal field without necessarily answering the ultimate issue or compromising ethical responsibilities.

The aim of this study was to examine the differences between lawyers' and psychologists' views of ultimate issue opinions in criminal and juvenile contexts using a

novel experimental design. Previous research surveyed lawyers and judges, surveyed psychologists, and examined ultimate issue opinions in forensic mental health assessment reports. However, no study has directly compared responses of lawyers and psychologists, nor has an experimental design been used to examine views of ultimate issue opinions. Because people often act differently than they believe or report they will behave (West & Brown, 1975), an experimental design examining psycho-legal actors' treatment of ultimate issue opinions will add to the existing self-report literature.

### **Hypotheses**

1. Lawyers' ratings of the appropriateness (i.e., whether the opinion provided in the report is appropriate for the role of the evaluating expert) and potential influence of the reports would differ from those of psychologists based on the extent of ultimate issue opinion (i.e., none, penultimate, ultimate issue) provided.
  - Because of cautions against offering ultimate issue opinions within the forensic psychology field, it was predicted that lawyers would provide higher ratings than psychologists of the appropriateness and potential influence of forensic mental health report conclusions that contain ultimate issue opinions.
2. Participants' ratings of the appropriateness and potential influence of the reports would differ by context of assessment (i.e., juvenile versus adult) and extent of ultimate issue opinions provided.
  - It was predicted that the context of assessment would moderate the effect of ultimate issue (none, penultimate, ultimate issue) opinions on ratings of the appropriateness and potential influence of ultimate issue opinions.



Specifically, it was anticipated that reports containing ultimate issue opinions would be rated as less appropriate, but more influential, in a juvenile context than in an adult context.

3. From an exploratory perspective, it was predicted that flexibility (i.e., whether the participant believes ultimate opinions are appropriate sometimes, always, or never) and perceptions of who bears the responsibility of a negative outcome would mediate the relationship between profession and ratings of report appropriateness.

### **Method**

This study used a 2 (profession: psychologist, lawyer) x 2 (context: juvenile, adult) x 3 (opinion: none, penultimate, ultimate) design.

### **Participants**

There were a total of 233 participants. One participant was excluded after responding that he or she had not been involved in any cases involving a forensic mental health assessment during the previous year or throughout his or her career. 19.83% of participants failed a manipulation check. Therefore, the 186 participants who correctly identified having a juvenile or adult forensic mental health report in this study were included in the analyses. Of these 186 participants, 106 were psychologists (58 male, 48 female) and 80 were lawyers (53 male, 27 female) with experience in forensic mental health evaluations. Participants were recruited from 20 professional organizations<sup>1</sup> and

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<sup>1</sup> Participants were recruited from the American Psychology Law Society (AP-LS), Oregon Criminal Defense Lawyers Association (OCDLA), Alabama Criminal Defense Lawyers Association (ACDLA), New Hampshire Association of Criminal Defense Lawyers (NWACDL), New Mexico Criminal Defense Lawyers Association (NMCDLA), South Carolina Association of Criminal Defense Lawyers (SCACDL), Ohio Association of Criminal Defense Lawyers (OACDL), Kansas Association of Criminal Defense Lawyers (KACDL), Tennessee Association of Criminal Defense Lawyers (TACDL), Vermont Association

through Facebook. Responses were received from lawyers and psychologists in 42 states.<sup>2</sup> Participants ranged in age from 27-81 years ( $M = 50.72$ ,  $SD = 13.82$ ). Racial and ethnic diversity was sought, but was limited; it paralleled that of the organizations from which participants were recruited. The sample was 89.9% Caucasian, 5.4% multiracial, 1.1% Asian or Pacific Islander, .5% “other,” and 2.7% identified as Hispanic, Latino, or Spanish. Three participants (1.6%) chose not to answer questions about race and ethnicity.

Regarding the sample of psychologists, 96.2% were licensed, and reported length of licensure ranged from 1-46 years ( $M = 17.63$  years,  $SD = 12.95$ ). Those not currently licensed were not excluded from the study, as all participants reported being licensed at some point during their careers and having experience with forensic mental health assessments. The greatest number of psychologists reported working in private practice (46.2%); 24.5% in academia; 23.6% in forensic or court clinics; 10.4% in jail, prison, or a youth detention center; and 2.8% in a non-forensic mental health facility; 17.0% reported working in other settings. Approximately three-quarters of psychologists (77.4%) reported conducting juvenile forensic mental health evaluations during their careers, in addition to conducting adult mental health evaluations.

The number of forensic mental health assessments participants reported conducting in the previous year ranged from 0-800 ( $M = 56.39$ ,  $SD = 100.71$ ), and the

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of Criminal Defense Lawyers (VTACDL), Texas Criminal Defense Lawyers Association (TCDLA), Louisiana District Attorneys Association (LDAA), Oregon District Attorneys Association (ODAA), Louisiana District Attorneys Association (LDAA), California District Attorneys Association (CDAA), Kansas County and District Attorneys Association (KCDAA), Ohio Prosecuting Attorneys Association (OPAA), Utah County and District Attorneys Association (UCDAA), Montana County Attorneys Association (MCAA), Wisconsin District Attorneys Association (WDAA)

<sup>2</sup> No participants from Alaska, Arkansas, Hawaii, Idaho, Iowa, Mississippi, South Dakota or Utah completed surveys.

number during their careers ranged from 30-10,000 ( $M = 969.16$ ,  $SD = 1474.40$ ). See Figure 1 for the types of evaluations conducted. Regarding location, 45.3% of psychologists identified working primarily in an urban setting, 43.4% in a suburban setting, and 11.3% in a rural setting.

The majority of lawyers reported that, at the time of participation, they worked as private criminal defense attorneys (61.3%), public defenders (21.3%), and prosecutors (8.8%); 8.8% reported working in other areas. Lawyers currently working as prosecutors did not differ significantly on their ratings of appropriateness,  $t(70) = -0.92$ ,  $p = .36$ ,  $d = -.37$ , 95% CI [-0.55, 0.14], or influence,  $t(69) = -0.54$ ,  $p = .59$ ,  $d = -.23$ , 95% CI [-0.39, 0.18], when compared to lawyers currently engaged in criminal defense. Therefore, lawyers were examined as a single group when compared with psychologists. Lawyers reported previous employment as private criminal defense attorneys (57.5%), public defenders (42.5%), and prosecutors (27.5%); 16.3% reported working in other areas in the past. The majority of lawyers (82.5%) reported experience practicing juvenile law. There were no differences between participants with and without juvenile forensic mental health assessment experience; therefore, all respondents were included,  $t_{appropriateness}(71) = 0.64$ ,  $p = .52$ ,  $d = .17$ , 95% CI [-0.03, .88] and  $t_{influence}(72) = 0.99$ ,  $p = .68$ ,  $d = .28$ , 95% CI [.16, .65].

92.4% of lawyers reported that, in the previous year, they had handled cases involving forensic mental health assessments, with estimates ranging from 0-60 ( $M = 9.24$ ,  $SD = 12.90$ ); Lawyers estimated having handled 1-800 ( $M = 109.31$ ,  $SD = 158.84$ ) cases involving forensic mental health assessments during the course of their careers. See Figure 1 for the types of evaluations conducted in the cases lawyers handled. Half

(52.5%) of the lawyer participants identified working primarily in an urban setting, 31.3% in a suburban setting, and 16.3% in a rural setting.

### **Measures**

Measures included a demographic survey and a forensic mental health assessment report and associated survey. The demographic survey was tailored to the profession of the participant. Participants were asked to provide information regarding gender, age, ethnic and racial identity, experience in the field, current and previous areas of practice, experience with adult and juvenile forensic mental health assessments, and primary location of practice. Only professionally-related demographic questions differed for the two samples, and the appropriate set of demographic questions was triggered by participants' answers to a question about their profession.

Forensic mental health assessment reports were based on risk assessment evaluations provided by Heilbrun, Marczyk, and DeMatteo (2002) in their casebook and involved either an adult or a juvenile defendant. Reports were identical except for age and summary opinion. The summary opinion involved one of three variations: no opinion specified on the ultimate legal issue, an opinion offered on the penultimate legal issue, or an opinion offered on the ultimate legal issue. This resulted in a total of six forensic mental health reports, and the same report and surveys were provided to attorneys and psychologists (see Table 1).

Questionnaires were created in Qualtrics with block randomization. One forensic mental health assessment report was provided to each participant. A survey was administered following the forensic mental health assessment report to assess perceptions of ultimate issue opinions.

## **Procedures**

Participants were recruited online via professional listservs, email, and Facebook. Potential participants received an email containing a link to the questionnaire or accessed a recruitment post on Facebook. These posts sought psychologists and lawyers as participants, briefly described the study, and contained a link to one forensic evaluation report and the questionnaire. Requests to repost this information were also sent to lawyers and psychologists. The questionnaire was brief to increase response rate (Deutskens, De Ruyter, Wetzels, & Oosterveld, 2004), requiring less than 10 minutes to complete. The response rate for this study is unavailable because information was unobtainable regarding the total number of emails sent to members of professional organizations and the total number of individuals who saw the Facebook posts. However, of the entire pool of potential participants, 437 initiated the survey with 233 completing the survey, resulting in a dropout rate of 46.7%.

For a 2 X 2 X 3 between-subjects analysis of variance (ANOVA), with an alpha-level of .05, a sample size of 186 participants produced a power of .86 to detect a medium effect size ( $f=.25$ ) and a power of .21 to detect a small effect size ( $f=.10$ ). The obtained sample size produced sufficient power for the exploratory analyses, as bootstrapping can produce meaningful results even with sample sizes as small as 25 (Rucker, Preacher, Tormala, & Petty, 2001).

## **Method of Analysis**

Two 2 (profession: lawyer, psychologist) X 3 (opinion: none, penultimate, ultimate issue) between-subjects ANOVAs were used to evaluate the primary hypothesis that profession would moderate the effect of the extent of ultimate issue opinion on

ratings of the appropriateness and potential influence of forensic mental health reports. A separate ANOVA was run for each of the two dependent variables; a MANOVA was not used, as the study goal was to examine each of the individual outcome variables rather than test an overarching model. Two 2 (context: juvenile, adult) X 3 (opinion: none, penultimate, ultimate issue) between subjects ANOVAs were used to examine the secondary hypothesis that assessment type moderated the effect of extent of ultimate issue opinion on ratings of the appropriateness and potential influence of report. All confidence intervals of effect size were calculated at the 90% level for partial eta-squared because calculating confidence intervals for this measure of effect size is similar to one-sided hypothesis testing (Steiger, 2004). Post-hoc analyses were conducted when warranted.

Exploratory analyses were conducted to examine whether flexibility and perceptions of psychologists' levels of responsibility mediated the relationship between profession and ratings of report appropriateness. A simple mediation model, using Preacher and Hayes's methodology, was used to examine each of the potential mediators – flexibility and perceptions of psychologists' levels of responsibility. Significance for mediated pathways using this method is determined when zero is not included in the confidence interval (Preacher & Hayes, 2004).

## **Results**

### **Analyses of Primary Hypotheses**

To test the first hypothesis, a two-factor between-subjects ANOVA was conducted to determine whether ratings of the influence of a forensic mental health evaluation report on the court differed by profession and by the extent of the ultimate

issue opinion. Means and standard deviations for the six conditions are reported in Table 2. Main effects of profession,  $F(1,177) = 2.74, p = .10, \eta^2 = .02, 90\% \text{ CI } [0.00, 0.06]$ , and extent of the ultimate issue opinion,  $F(2,177) = 0.34, p = .71, \eta^2 < .01, 90\% \text{ CI } [0.00, 0.02]$ , were not significant. A significant interaction was not observed between these variables,  $F(2,177) = 0.49, p = .61, \eta^2 < .01, 90\% \text{ CI } [0.00, 0.03]$ .

A second two-factor between-subjects ANOVA was conducted to determine whether the appropriateness of a forensic mental health evaluation report differed significantly by profession and the extent of the ultimate issue opinion. Means and standard deviations for the six conditions are reported in Table 2. No significant main effects for profession:  $F(1, 176) = 0.01, p = .93, \eta^2 < .01, 90\% \text{ CI } [0.00, 0.002]$ , or for extent of the ultimate issue opinion:  $F(2, 176) = 1.69, p = .19, \eta^2 = .02, 90\% \text{ CI } [0.00, 0.05]$ , nor an interaction,  $F(2, 176) = 1.59, p = .21, \eta^2 = .02, 90\% \text{ CI } [0.00, 0.04]$ , were observed.

### **Analyses of Secondary Hypotheses**

A two-factor between-subjects ANOVA was conducted to determine whether ratings of the influence of a forensic mental health evaluation report on the court differed by context of the evaluation and extent of the ultimate issue opinion. Means and standard deviations for the six conditions are reported in Table 2. Neither main effects for context:  $F(1, 177) = 0.08, p = .78, \eta^2 < .01, 90\% \text{ CI } [0.00, 0.02]$  nor extent of the ultimate issue opinion:  $F(2, 177) = 0.17, p = .85, \eta^2 < .01, 90\% \text{ CI } [0.00, 0.01]$  were detected; a significant interaction,  $F(2, 177) = 2.73, p = .07, \eta^2 = .03, 90\% \text{ CI } [0.00, 0.08]$ , was not observed.

To evaluate whether ratings of appropriateness differed significantly by context and extent of the ultimate issue opinion, a two-factor between-subjects ANOVA was conducted. Means and standard deviations for the conditions are reported in Table 2. A significant interaction effect,  $F(2, 176) = 3.28, p = .04, \eta^2 = .04, 90\% \text{ CI } [0.001, 0.44]$ , was observed (see Figure 2). Main effects for context,  $F(1, 176) = 1.20, p = .28, \eta^2 < .01, 90\% \text{ CI } [0.00, 0.04]$ , and extent of the ultimate issue opinion,  $F(2, 176) = 2.59, p = .08, \eta^2 = .03, 90\% \text{ CI } [0.00, 0.07]$ , were not observed. These findings remained even when controlling for profession,  $F(2, 175) = 3.25, p = .04, \eta^2 = .04, 90\% \text{ CI } [0.001, 0.08]$ , and when controlling for number of forensic mental health evaluations encountered during one's career,  $F(2, 173) = 3.224, p = .04, \eta^2 = .04, 90\% \text{ CI } [0.001, 0.08]$ . Post-hoc LSD pairwise comparisons revealed that evaluation reports containing an ultimate issue opinion for a juvenile were rated as *less* appropriate than evaluation reports for a juvenile containing a penultimate opinion (see Table 3). Reports that offered an ultimate opinion for a juvenile were viewed as less appropriate than adult reports that offered either an ultimate opinion or a penultimate opinion (see Table 3).

### **Analyses of Exploratory Hypotheses**

In order to examine psychologists' and lawyers' flexibility in considering the appropriateness of ultimate issue opinions, a Chi-Square Test of Independence was conducted. The number of participants reporting that ultimate issue opinions should be offered never, sometimes, or always as a function of profession is shown in Figure 3. An initial omnibus test revealed a significant relationship between profession and flexibility in approach to ultimate issue opinions,  $\chi^2(2, N = 185) = 12.89, p < .01, \text{Cramer's } V = 0.26, 95\% \text{ CI } [0.12, 0.39]$ .



Post-hoc analyses using a Bonferroni correction ( $\alpha = .02$ ) revealed significant relationships between profession and endorsement when the endorsement options compared were always and never offering ultimate issue opinions,  $X^2(1, n = 62) = 9.66, p < .01, Cramer's V = 0.39, 95\% CI [0.15, 0.59]$ , and when always offering an ultimate issue opinion was compared to offering ultimate issue opinions in some cases,  $X^2(1, n = 150) = 11.52, p < .01, Cramer's V = 0.28, 95\% CI [0.12, 0.42]$ . A significant relationship was not found between profession and preference that ultimate issue opinions be offered sometimes versus never,  $X^2(1, n = 158) = 0.18, p = .67, Cramer's V = 0.03$  (See Table 4). Overall, lawyers had a preference for ultimate issue opinions in all situations. Lawyers were 5.48 times more likely to believe that ultimate issue opinions should always be offered than they were to believe that they should never be offered. Additionally, lawyers were 4.62 times more likely to prefer that ultimate issue opinions be offered in all cases than they were to believe that ultimate issue opinions should be offered in only some cases.

Flexibility significantly mediated the pathway from profession to ratings of appropriateness. The 95% bias corrected and accelerated confidence interval was estimated to be between  $-.17$  and  $-.01$ . This finding remained even when controlling for the survey conditions of context and extent of opinion offered.

A Chi-Square Test of Independence was conducted to examine the relationship between psychologists' and lawyers' views of who would be responsible for a negative outcome following a decision that included a forensic mental health evaluation report. See Figure 4 for perceived responsibility. An omnibus test revealed a significant relationship between profession and view of responsibility,  $X^2(3, n = 184) = 13.90, p <$

.01, *Cramer's V* = 0.27, 95% CI [0.13, 0.41]. Post-hoc analyses using a Bonferroni correction ( $\alpha = .008$ ) revealed two significant relationships (See Table 5). Psychologists were more likely than lawyers to view both the psychologist and the judge as responsible for a negative outcome than they were to view neither party as responsible,  $X^2(1, n = 160) = 10.08, p = .001, Cramer's V = 0.25, 95\% CI [0.10, 0.39]$ . Additionally, psychologists were more likely than lawyers to view both the evaluating psychologist and the judge as responsible for a negative outcome than they were to view solely the evaluating psychologist as responsible,  $X^2(1, n = 35) = 8.99, p = .003, Cramer's V = 0.51, 95\% CI [0.19, 0.73]$ . Views of who would be responsible for a negative outcome mediated the relationship between profession and ratings of report appropriateness, 95% CI [-0.18, -0.01], such that attributing responsibility to neither party or solely to the evaluating psychologist was associated with higher ratings of appropriateness.

### **Discussion**

Results from the current study support findings in three key areas. First, results suggest that the professions of law and psychology do not view the appropriateness or influence of ultimate issue opinions in forensic mental health evaluation reports differently. Despite this similar perception of the appropriateness and influence of ultimate issue opinions, lawyers nonetheless had a preference for the offering of ultimate issue opinions in *all* cases. On the other hand, psychologists preferred that ultimate issue opinions be offered in some cases or not at all. This suggests that even though psychologists and lawyers perceive the appropriateness and influence of forensic mental health reports similarly, the two professions take different approaches regarding when ultimate issue opinions should be offered.

The relationship between profession and ratings of appropriateness of ultimate issue opinions was mediated by this flexibility in approach. The role of flexibility may reflect lawyers' and judges' views that descriptive testimony and ultimate issue opinions are more important and valuable than other types of mental health expert testimony (Poythress, 1981; Redding, Floyd, & Hawk, 2001) and, therefore, should be provided in all cases.

Additionally, it is possible that the roles of attorneys (i.e., advocate) and psychologists (i.e., unbiased evaluator) contribute to professional preferences for whether ultimate issue opinions should be provided never, sometimes, or always. For example, the ethical considerations of whether and when to offer an ultimate issue opinion in forensic mental health evaluation reports is a significant focus of graduate training programs and continuing education seminars in forensic psychology (Goldstein, 2006). However, in legal contexts, the focus is on whether ultimate issue opinions are specifically prohibited within a given jurisdiction rather than on ethical considerations and, when ultimate issue opinions are not prohibited, the general legal expectation is that they will be provided (Redding, Floyd, & Hawk, 2001; Conroy, 2006).

Whether a lawyer is a prosecutor or defense attorney may further impact views of when an ultimate issue opinion should be provided and whether it is viewed as appropriate. Given that a lawyer's role is to advocate for one side in a case, an attorney's view on the value of an ultimate issue opinion may depend on whether the opinion provided in a report favors the attorney's client. In contrast, a forensic mental health professional should serve as an unbiased expert, presenting an objective opinion, free from influence by the retaining party (APA, 2011, Principle 1.02; Heilbrun, 2001).

Despite this idealized objectivity, an evaluating psychologist's views may be differentially impacted—consciously or unconsciously—based on who hired the mental health expert—the defense or prosecution. Partisan allegiance, or the tendency of forensic experts to present their findings in a manner that is favorable to the side that retained their services, may impact the findings and conclusions of forensic mental health evaluators (Murrie, Boccaccini, Guarnera, & Rufino, 2013; Murrie, Boccaccini, Johnson, & Janke, 2008), and may influence the decision of whether and when to offer ultimate issue opinions.

Given that lawyers have a strong preference for ultimate issue opinions in all cases, further research is needed to identify the factors contributing to this preference. Previous research suggests that when lawyers and judges gain additional experience working with forensic mental health professionals and are more familiar with ultimate issue opinions, they tend to place less emphasis on ultimate issue opinions and instead focus on other evidence mental health experts have to offer (Redding, Floyd, & Hawk, 2001). Experience with forensic mental health evaluations, therefore, may impact lawyers' preferences for when ultimate issue opinions are offered. For example, more novice lawyers may tend to prefer ultimate issue opinions in all cases, but this approach may change with training, familiarity, or additional years of experience working with cases involving mental health issues. Additionally, lawyers may develop more advanced advocacy skills that allow them to incorporate supporting details from expert witnesses when arguing cases. These skills may provide additional strategic options beyond solely relying on an expert's conclusory statement to support a case. If further research supports such a finding, trainings that are designed to provide additional exposure to and

practice with mental health evaluation reports and testimony may provide a more nuanced perspective for legal professionals concerning the use of ultimate issue opinions.

Although judges and lawyers may be critical of expert testimony (Mossman 1999; Redding, 1999; Redding and Reppucci, 1999), they find value in the types of evidence mental health experts have to offer, particularly in ultimate issue opinions (Redding, Floyd, & Hawk, 2001). Lawyers and judges appear to value the judgment of mental health experts for their potential to assist juries (Poythress, 1981). It is unclear from the present study how these professions vary in their views of forensic mental health evaluation reports and the opinions contained within, beyond differing preferences between the professions for when ultimate issue opinions should be offered. Further research should seek to examine other potential differences in approaches to forensic mental health evaluation reports between these professions and the factors that may be driving the difference in flexibility observed in this study. Future research should also examine the influence of reports on juries and judges, as these fact finders make legal decisions based on evidence presented in experts' reports and/or in their related testimony.

Second, juvenile ultimate issue opinions were viewed as less appropriate than other types of ultimate issue and penultimate issue opinions. It appears that appropriateness is more a function of context (e.g., adult or juvenile court) and the extent of the opinion offered (e.g., penultimate, ultimate) than it is of profession. Interestingly, although previously surveyed psychologists believed that the ultimate opinion is an essential component of a juvenile forensic evaluation (Ryba, Cooper, & Zapf, 2003), participants in this study viewed ultimate opinions in juvenile reports as *less* appropriate

than penultimate opinions in juvenile reports and penultimate and ultimate opinions in adult reports. This finding may be due to the more nuanced opinion options available to participants in this study compared to previous research; in the current study, penultimate opinions were provided rather than just the presence or absence of an ultimate issue opinion.

Alternatively, the finding that ultimate issue opinions are generally less appropriate in juvenile reports may reflect a shift in the field or it may reflect the relatively new status of juvenile forensic training, such that professionals have only just begun to consider this issue because of the increased access to specialized training. If the majority of juvenile risk assessment reports do not contain ultimate issue opinions, lawyers and psychologists may not expect this type of opinion to be included in these reports. Additionally, the role of an ultimate issue opinion may be less important in juvenile cases, where rehabilitation is the purported focus of the court. Instead, describing other, broader conclusions of the evaluation, such as treatment needs, may be more beneficial to the court.

More recent research has found that mental health experts more frequently identify protective factors, treatment recommendations, recommendations to reevaluate risk, and limitations of their judgments in juvenile risk assessment reports than they do in adult reports (Viljoen, McLachlan, & Vincent, 2010). Including this additional and more detailed information may be of greater value to judges and lawyers than an ultimate issue opinion. These more extensive components found in juvenile reports may negate the legal profession's desire for an ultimate issue opinion and may provide a more nuanced basis from which to base legal findings and outcomes.

Finally, it appears that views on which party would be responsible for the negative consequence (e.g., violence) of an incorrect decision (e.g., to release an individual at high risk for violence) varies by profession. Specifically, psychologists were more likely to believe that both the judge and the evaluator would be responsible rather than solely the evaluating psychologist. Additionally, lawyers were more likely than psychologists to believe that neither would be responsible rather than both. The relationship between profession and ratings of appropriateness was impacted by responsibility, suggesting that the role of perceived responsibility indirectly affects views of the appropriateness of providing an ultimate issue opinion. It is possible that psychologists overestimate their own liability risk when conducting forensic assessments. The role of liability and its impact on how forensic psychologists approach forensic mental health assessments should be explored. For example, if psychologists believe they have a high likelihood of liability for a negative outcome, this may limit when they view ultimate issue opinions as appropriate, if at all.

Additionally, views of liability and responsibility for negative outcomes between lawyers and psychologists should be further examined to determine if the role of advocate versus unbiased evaluator impacts these views. Given that a lawyer's job is to advocate for a client, lawyers may feel further removed from a potential negative outcome. On the other hand, psychologists may view their expert forensic opinions as having a direct impact on the legal decision-maker and, consequently, on the individual being evaluated and on the welfare of the community. The weight of this role might limit how comfortable psychologists feel with providing ultimate issue opinions. Although risk and liability issues are frequently discussed in the literature (e.g., Heilbrun,

DeMatteo, Marczyk, & Goldstein, 2008; Bennett et al., 2006; Appelbaum, 2001), no study, thus far, has examined psychologists' perceptions of their risks of liability and how these perceptions impact their professional practices. Additionally, the level of risk associated with a negative outcome and severity of potential damage may impact perceived liability and its effects on practice. For example, the risk associated with a "wrong" decision in a competency evaluation (e.g., extended competence restoration services, go to trial) is much lower than the risk associated with a "wrong" decision in a violence risk assessment to accompany a release decision (e.g., potential for violence against a victim or victims). Therefore, future research should vary types of evaluations, levels of risk, and final opinions when comparing the views of legal professionals and forensic mental health experts.

### **Implications**

The finding that lawyers and mental health evaluators have different views on when ultimate issue opinions should be provided supports the notion that these two professions have distinct and separate approaches to this issue. These differences may negatively impact the relationships between lawyers and the forensic psychology experts they retain, providing a potential source of contention. To reduce difficulties that may arise during such interactions, conversations should occur upfront, prior to retaining the services of a forensic mental health expert, an approach that is consistent with principle 1.5.4 of the proposed principles of FMHA (Heilbrun, 2001). Such a conversation should include discussion of the evaluator's approach to ultimate issue opinions and the lawyer's expectations for the services rendered. Furthermore, a direct discussion about ultimate issue opinions sets the stage for expectations regarding the content of forensic mental



health reports and, when necessary, forensic mental health testimony during court proceedings.

Because the ethical implications of offering an ultimate issue opinion is of great concern and a highly debated topic among forensic psychologists, legal training may be bolstered by including specialized educational opportunities that focus on the forensic psychological position. Including cross-discipline viewpoints may provide additional information to lawyers and judges about why forensic mental health experts may be unable or unwilling to provide ultimate issue opinions in reports or on the stand. Access to this information may provide a basis for legal actors to be able to accept forensic mental health reports as valuable despite the absence of an ultimate issue opinion.

The finding that ultimate issue opinions are viewed as less appropriate in juvenile contexts than adult contexts suggests that the approach to ultimate issue opinions may vary depending on whether a case is located within the juvenile justice system or the criminal justice system. Forensic mental health experts who are familiar with and have experience serving as experts within the criminal justice system may not be aware of this shift when working within the juvenile justice system. If providing forensic mental health evaluations within the juvenile justice system, such experts may approach the assessment, report, and testimony process in a manner considered appropriate within the criminal justice system and provide ultimate issue opinions. This difference may serve as a significant factor for those juveniles who are facing waiver to adult courts.

Although ultimate issue opinions were found to be less appropriate in juvenile contexts, it is unclear whether juvenile courts endorse this expectation as well. If juvenile court judges adhere to the expectation that a forensic mental health expert should offer an

ultimate issue opinion, the value of forensic mental health reports in juvenile justice contexts may be undermined when such opinions are not included. Alternatively, if juvenile court judges are on the same page regarding the inappropriateness of ultimate issue opinions, the finding that other, additional components (e.g., discussion of protective factors and treatment issues) are more likely to be found in juvenile forensic mental health reports (Viljoen, McLachlan, & Vincent, 2010) suggests that juvenile forensic mental health experts may be meeting the needs of the juvenile justice system by providing these additional types of information rather than an ultimate issue opinion. Future research should examine how judges approach ultimate issue opinions in forensic mental health reports and should specifically compare juvenile court judges' approaches to those of criminal court judges.

Historically, the juvenile justice system was created to address the unique needs of youth with the specific goal of rehabilitation rather than punishment, which is the primary purpose of the criminal justice system (Oberlander, Goldstein, & Ho, 2001). Although recent years have displayed a renewed effort towards rehabilitation, juvenile justice proceedings and dispositions have nonetheless taken on adversarial and punitive characteristics of the criminal system over recent decades (Skeem, Scott, & Mulvy, 2014, Scott & Steinberg, 2008; Redding, 2001; Austin, Johnson, & Gregoriou, 2000). Because judges are inclined to follow the recommendations of a forensic mental health evaluator when making legal determinations and frequently rely solely on evaluators' reports (Melton, Pettila, Poythress, & Slobogin, 2007; Hecker & Steinberg, 2002; Roesch & Golding, 1980; Steadman, 1979), not providing an ultimate issue opinion in juvenile cases may help ensure that the court will be the final decision maker, rather than just

deferring to the decision of a mental health expert. Although this may theoretically help protect the rights of juveniles by improving the decision-making process, previous research has found that juvenile forensic mental health reports tend to have problems regarding the thoroughness and quality of their content despite having additional areas of focus included in the reports (Hecker & Steinberg, 2002). Judges are inclined to place greater value on reports in which reasoning is more clearly explained even when such deficiencies are present (Hecker & Steinberg, 2002). In a system that is less adversarial and has fewer opportunities to truly challenge expert opinions, such a reliance on inadequate or substandard reports may negatively impact juveniles. Although not including a conclusory ultimate issue opinion may increase the likelihood that evaluators may provide more thorough reasoning in their reports, which can provide additional information for judicial decisions, this reasoning should not come at the expense of the quality or the content of the report.

### **Limitations**

Participants in this study may not fully and accurately reflect the population of interest. Those who chose to participate in this study may represent a biased sample of individuals who are interested in this particular topic or who have experience or expertise within this area. For example, the psychologists recruited in this study were recruited from APLS and may not have included occasional forensic mental health experts or those not specifically trained in forensic psychology. Nevertheless, the participants recruited came from a diverse geographical area, including 42 of the country's 50 states. Additionally, participants had varied backgrounds and practice areas. Future research should seek to recruit a much larger and broader sampling of those involved in

conducting and consuming forensic mental health evaluations, with special care to target recruitment of more specific subgroups, including jurors, criminal court judges, juvenile court judges, prosecutors, defense attorneys, and psychologists—including those retained almost exclusively as experts by the defense, prosecution, or courts.

Forensic mental health assessment reports do not follow a standardized format. The content and style of reports varies by the evaluator, referral question, and nature of the individual case. Given this variability, the sample reports provided as stimulus materials in this study may not reflect the reports actually produced by psychologists and encountered by attorneys in their careers. If participants noticed differences between the sample forensic mental health reports in the study and those they frequently encounter during their professional work, their responses may have reflected, at least in part, their perceptions of these differences. For example, if participants expected longer reports that contained additional areas of focus based on their prior experiences, the brief report in this study may have appeared substandard and inadequate in comparison.

To increase participation, the length of the reports was shortened so that time demands on participants would be brief. Therefore, the reports were less comprehensive than many forensic mental health assessment reports that are produced for courts (Zelechowski, 2009). Additionally, adult and juvenile forensic mental health evaluation reports often differ in several ways, with juvenile reports including sections focused on protective factors, treatment recommendations, recommendations to reevaluate risk, and limitations of judgments (Viljoen, McLachlan, & Vincent, 2010). However, to enhance the internal validity of the study with a clean experimental design, only the age of the defendant and type of opinion offered differed across reports – all other content and

language were identical. In future research, studies might include forensic mental health reports of varying lengths to better approximate the wide range of detail included in real-world reports (Zelechowski, 2009; Lander, 2006). Alternatively, if future studies include only brief reports as a means of successfully obtaining participation, the researchers might seek to limit the impact of the brief report by including a disclaimer regarding the purpose of the reduced length.

### **Conclusions**

In sum, this study supports the view that lawyers and psychologists engage in different approaches to when ultimate issue opinions should be provided in forensic mental health evaluation reports. Lawyers prefer to have forensic mental health evaluation reports that always contain ultimate issue opinions, whereas psychologists prefer to offer such opinions on a more limited basis, if at all. Importantly, lawyers and psychologists believed that ultimate issue opinions provided in juvenile cases are different -- and less appropriate -- than ultimate issue opinions in adult cases and penultimate opinions in both juvenile and adult cases. This is an important finding that suggests that views of when ultimate issue opinions should be provided may be context dependent. Given the frequency of ultimate issue opinions in various contexts (Heilbrun & Collins, 1995; Lander, 2006; Zelechowski, 2009), it may be important to identify whether views of appropriateness differ across types of evaluations, such as competency, criminal responsibility, risk assessment, and sentencing, and across levels of risk associated with “wrong” opinions. Future research might examine the role of different components of mental health evaluation reports utilizing an experimental survey methodology. Additionally, research may explore the relationship between legal

outcomes, partisan allegiance, and the extent of ultimate issue opinions provided in a case. Furthermore, because judges and juries are often in the positions of weighing mental health experts' testimony, future research should replicate and expand this research to these legal decision makers.

### References

- American Bar Association (1989). *ABA Criminal Justice Mental Health Standards*. Washington, DC: Author.
- American Psychological Association (2002). Ethical principles of psychologists and code of conduct. *American Psychologist, 57*, 1060-1073.
- American Psychological Association (1994). Guidelines for child custody evaluations in divorce proceedings. *American Psychologist, 49*, 677-680.
- American Psychological Association (2011). Specialty guidelines for forensic psychologists. Retrieved from [https://www.apls.org/aboutpsychlaw/SGFP\\_Final\\_Approved\\_2011.pdf](https://www.apls.org/aboutpsychlaw/SGFP_Final_Approved_2011.pdf)
- Austin, J., Johnson, K. D., & Gregoriou, M. (2000). Juveniles in adult prisons and jails: A national assessment. *Bureau of Justice Assistance*.
- Appelbaum, P. S. (2001). Law and psychiatry: Liability for forensic evaluations: A word of caution. *Psychiatric Services, 52*(7), 885-886.
- Bartosh, D., L., Garby, T., Lewis, D., & Gray, S. (2003). Differences in the predictive validity of actuarial risk assessments in relation to sex offender type. *International Journal of Offender Therapy and Comparative Criminology, 47*, 422-438.
- Bennett, B. E., Bricklin, P. M., Harris, E., Knapp, S., VandeCreek, L., & Younggren, J. N. (2006). *Assessing and Managing Risk in Psychological Practice: An Individualized Approach*. Rockville, MD: The Trust.
- Bonnie, R. & Slobogin, C. (1980). The role of mental health professionals in the criminal process: The case for informed speculation. *Virginia Law Review, 66*, 427-522.
- Borum, R. & Grisso, T. (1996). Establishing standards for criminal forensic reports: An empirical analysis. *Bulletin of the American Academy of Psychiatry and Law, 24*, 297-317.
- Christy, A., Douglas, K. S., Otto, R. K., & Petrila, J. (2004). Juveniles evaluated incompetent to proceed: Characteristics and quality of mental health professionals' evaluations. *Professional Psychology, 35*, 380-388.
- Cicccone, J. R. & Clements, C. (1987). The insanity defense: Asking and answering the ultimate question. *Bulletin of the American Academy of Psychiatry and the Law, 15*, 329-338.

Committee on Ethical Guidelines for Forensic Psychologists, 2011.

Conroy, M. A. (2006). Report writing and testimony. *Applied Psychology in Criminal Justice*, 2(3), 237-260.

Deutskens, E., De Ruyter, K., Wetzels, M. & Oosterveld, P. (2004). Response rate and response quality of internet-based surveys: An experimental study, *Marketing Letters*, 15(1), 21-36.

*Federal Rules of Evidence for United States Courts and Magistrates*. (1987). St. Paul, MN: West Publishing Company. Section 704.

Fulero, S. M. & Finkel, N. J. (1991). Barring ultimate issue testimony. *Law and Human Behavior*, 15(5), 495-507.

Goldstein, A. M. (2006). *Forensic Psychology: Emerging Topics and Expanding Roles*. Hoboken, New Jersey: John Wiley & Sons, Inc.

Goldstein, R. L. (1989). The psychiatrist's guide to right and wrong: Part IV The insanity defense and the ultimate issue rule. *Bulletin of the American Academy of Psychiatry and the Law*, 17(3), 269-281.

Hanson R. K. & Morton-Bourgon, K. E. (2009). The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment*, 21, 1-21.

Hart, S. (2009). Evidence-based assessment of risk for sexual violence. *Chapman Journal of Criminal Justice*, 1, 143-165.

Hecker, T. & Steinberg, L. (2002). Psychological evaluation at juvenile court disposition. *Professional Psychology: Research and Practice*, 33, 300-306.

Heilbrun, K. (2001). *Principles of forensic mental health assessment*. New York, NY: Kluwer Academic.

Heilbrun, K. & Collins, S. (1995). Evaluations of trial competency and mental state at the time of offense: Report characteristics. *Professional Psychology: Research and Practice*, 26, 61-67.

Heilbrun, K., DeMatteo, D., Marczyk, G., & Goldstein, A. (2008). Standards of practice and care in forensic mental health assessment: Legal, professional, and principles-based considerations, *Psychology, Public Policy, and Law*, 14, 1-26. doi: 10.1037/1076-8971.14.1.1

Heilbrun, K., Marczyk, G., & DeMatteo, D. (2002). *Forensic Mental Health Assessment: A Casebook*. New York, NY: Oxford University Press.



- Lander, T. (2006). *The content and quality of forensic mental health assessment: Validation of a principles-based approach*. (Unpublished doctoral dissertation). Drexel University, Philadelphia, PA.
- Lidz, C. W., Mulvey, E. P., & Gardner, W. (1993). The accuracy of predictions of violence to others. *Journal of the American Medical Association*, *269*, 1007-1011.
- Melton, G. B., Petrila, J., Poythress, N. G., & Slobogin, C. (2007). *Psychological Evaluations for the Courts* (3<sup>rd</sup> ed.). New York, NY: The Guilford Press.
- Morse, S. J. (1978a). Crazy behavior, morals, and science: An analysis of mental health law. *Southern California Law Review*, *51*, 527-654.
- Morse, S. J. (1978b). Law and mental health professionals: The limits of expertise. *Professional Psychology*, *9*, 389-399.
- Morse, S. J. (1982a). Failed explanations and criminal responsibility: Experts and the unconscious. *Virginia Law Review*, *68*, 971-1084.
- Morse, S. J. (1982b). Reforming expert testimony: An open response from the tower (and the trenches). *Law and Human Behavior*, *6*, 45-47.
- Mossman, D. (1994). Assessing predictions of violence: Being accurate about accuracy. *Journal of Consulting and Clinical Psychology*, *62*, 783-792.
- Mossman, D. (1999). "Hired guns," "whores," and "prostitutes": Case law references to clinicians of ill repute. *Journal of the American Academy of Psychiatry and the Law*, *27*, 416-425.
- Murrie, D. C., Boccaccini, M. T., Guarnera, L. A., & Rufino, K. A. (2013). Are forensic experts biased by the side that retained them? *Psychological Science*, *24*, 1889-1897.
- Murrie, D. C., Boccaccini, M. T., Johnson, J. T., & Janke, C. (2008). Does interrater (dis)agreement on psychopathy checklist scores in sexually violent predator trials suggest partisan allegiance in forensic evaluations? *Law and Human Behavior*, *32*, 352-362.
- Oberlander, L. D., Goldstein, N. E., & Ho, C. N. (2001). Preadolescent adjudicative competence: Methodological considerations and recommendations for practice standards. *Behavioral Sciences and the Law*, *19*, 545-563.
- Parry, J. W. (2009). *Criminal Mental Health and Disability Law: Evidence and Testimony*. Chicago, Illinois: American Bar Association.

- Poythress, N. (1981). *Conflicting Postures for Mental Health Expert Witnesses: Prevailing Attitudes of Trial Court Judges*. Ann Arbor: MI: Center for Forensic Psychiatry.
- Poythress, N. G. (1982). Concerning reform in expert testimony: An open letter from a practicing psychologist. *Law and Human Behavior*, 6, 39-43.
- Preacher, K. J., & Hayes, A. F. (2004). SPSS and SAS procedures for estimating indirect effects in simple mediation models. *Behavior Research Methods, Instruments, and Computers*, 36, 717-731.
- Redding, R. E. (1999). How common-sense psychology can inform law and psycholegal research. *University of Chicago Law School Roundtable*, 5, 107-142.
- Redding, R. E. & Reppucci, N. D. (1999). Effects of lawyers' socio-political attitudes on their judgments of social science in legal decision making. *Law and Human Behavior*, 23, 31-54.
- Redding, R. E., Floyd, M. Y., & Hawk, G. L. (2001). What judges and lawyers think about the testimony of mental health experts: A survey of the courts and bar. *Behavioral Sciences and the Law*, 19, 583-594. doi: 10.1002/bsl.455
- Roesch, R. & Golding, S. (1980). *Competency to stand trial*. Urbana-Champaign: University of Illinois Press.
- Rogers, R. & Ewing, C. P. (1989). Ultimate opinion proscriptions: A cosmetic fix and a plea for empiricism. *Law and Human Behavior*, 13(4), 357-374.
- Rogers, R. & Ewing, C. P. (2003). The prohibition of ultimate opinions: A misguided enterprise. *Journal of Forensic Psychology Practice*, 3(3), 65-75.
- Rucker, D. D., Preacher, K. J., Tormala, Z. L., & Petty, R. E. (2011). Mediation analysis in social psychology: Current practices and new recommendations. *Social and Personality Psychology Compass*, 5/6, 359-371.
- Ryba, N. L., Cooper, V. G., & Zapf, P.A. (2003). Juvenile competence to stand trial evaluations: A survey of current practices and test usage among psychologists. *Professional Psychology: Research and Practice*, 34, 499-507.
- Schwalbe, C. S. (2008). A meta-analysis of juvenile risk assessment instruments: Predictive validity by gender. *Criminal Justice and Behavior*, 35, 1367-1381.
- Schwalbe, C. S. (2007). Risk assessment for juvenile justice: A meta-analysis. *Law and Human Behavior*, 31, 449-462.
- Scott, E. S. & Steinberg, L. (2008). *Rethinking Juvenile Justice*. Cambridge, MA: Harvard University Press.

- Simes, R. J. (1986). An improved Bonferroni procedure for multiple tests of significance. *Biometrika*, *73*, 751-754.
- Skeem, J. L., Scott, E., & Mulvy, E. P. (2014). High-risk juveniles: Using science to achieve large-scale crime reduction. *Annual Review of Clinical Psychology*, *10*, 709-739.
- Slobogin, C. (1989). The “ultimate issue” issue. *Behavioral Sciences and the Law*, *7*(2), 259-266.
- Slobogin, C. (2013). Risk assessment and risk management in juvenile justice. *Criminal Justice*, *27.4*, 10.
- Steadman, H. J. (1979). *Beating a rap? Defendants found incompetent to stand trial*. Chicago: University of Chicago Press.
- Steinberg, L. & Schwartz, R. G. (2000). Developmental psychology goes to court. In T. Grisso & R. G. Schwartz (Eds.), *Youth on trial: A developmental perspective on juvenile justice* (9-32). Chicago: The University of Chicago Press.
- Tillbrook, C., Mumley, D., & Grisso, T. (2003). Avoiding testimony on the ultimate legal question. *Journal of Forensic Psychology Practice*, *3*, 77-78.
- Viljoen, J. L., McLachlan, K., & Vincent, G. M. (2010). Assessing violence risk and psychopathy in juvenile and adult offenders: A survey of clinical practices. *Assessment*, *17*(3), 377-395.
- Warren, J. I., Murrie, D. C., Chauhan, P., Dietz, P. E., & Morris, J. (2004). Opinion formation in evaluating sanity at the time of the offense: An examination of 5175 pre-trial evaluations. *Behavioral Sciences and the Law*, *22*, 171-186.
- West, S. G. & Brown, T. J. (1975). Physical attractiveness, the severity of the emergency and helping: A field experiment and interpersonal simulation. *Journal of Experimental Social Psychology*, *11*, 531-538.
- Yang, M., Wong, S. C. P., & Cold, J. (2010). The efficacy of violence prediction: A meta-analytic comparison of nine risk assessment tools. *Psychological Bulletin*, *136*, 740-767.
- Zelechowski, A. D. (2009). *The content of child custody evaluation reports: A forensic assessment principles-based analysis*. (Unpublished doctoral dissertation). Drexel University, Philadelphia, PA.

## Appendix A: Tables

Table 1  
*Number of Participants by Condition and Profession*

		Type of Opinion in Report			
		No Opinion <i>n</i>	Penultimate <i>n</i>	Ultimate <i>n</i>	
Context	Juvenile	= 22 <i>Psychologists</i> = 12 <i>Lawyers</i> = 11	= 27 <i>Psychologists</i> = 17 <i>Lawyers</i> = 10	= 26 <i>Psychologists</i> = 16 <i>Lawyers</i> = 10	<i>n</i> = 75
	Adult	= 31 <i>Psychologists</i> = 18 <i>Lawyers</i> = 13	= 37 <i>Psychologists</i> = 20 <i>Lawyers</i> = 17	= 43 <i>Psychologists</i> = 22 <i>Lawyers</i> = 20	<i>n</i> = 111
		<i>n</i> = 53	<i>n</i> = 64	<i>n</i> = 69	<i>N</i> = 186

Table 2

*Mean (SD) Scores for Profession x Extent of Ultimate Issue Opinion Conditions*

<u>Profession</u>	Extent of Ultimate Issue Opinion					
	<u>None</u>	<u>Influence Scores</u>		<u>Appropriateness Scores</u>		
		<u>Penultimate</u>	<u>Ultimate</u>	<u>None</u>	<u>Penultimate</u>	<u>Ultimate</u>
Lawyer	4.09 (.53)	4.27 (.60)	4.20 (.71)	3.34 (.59)	3.62 (.92)	3.67 (.84)
Psychologist	4.07 (.65)	4.05 (.78)	3.95 (.56)	3.47 (.90)	3.86 (.83)	3.35 (1.09)
<u>Context</u>						
Juvenile	4.16 (.44)	4.09 (.70)	4.13 (.56)	3.55 (.74)	3.77 (.95)	3.28 (1.07)
Adult	3.97 (.64)	4.30 (.70)	4.07 (.57)	3.39 (.80)	3.75 (.84)	3.72 (.87)

Table 3

*Post-Hoc Results: T-test Comparisons of Ratings of Appropriateness by Context and Extent of Opinion*

<u>Conditions</u>	<u>M (SD)</u>	<u>df</u>	<u>t</u>
Juvenile Penultimate	3.77 (0.95)	50	-2.32*
Juvenile No Opinion	3.55 (0.74)	46	-1.59
Adult Ultimate	3.73 (0.87)	65	-2.59**
Adult Penultimate	3.75 (0.84)	60	-2.61**
Adult No Opinion	3.39 (0.80)	55	-1.09
<u>Conditions</u>	<u>M (SD)</u>	<u>df</u>	<u>t</u>
Juvenile No Opinion	3.55 (0.74)	46	0.90
Adult Ultimate	3.73 (0.87)	65	0.17
Adult Penultimate	3.75 (0.84)	60	0.08
Adult No Opinion	3.39 (0.80)	55	1.65
<u>Conditions</u>	<u>M (SD)</u>	<u>df</u>	<u>t</u>
Adult Ultimate	3.73 (0.87)	61	-0.85
Adult Penultimate	3.75 (0.84)	56	-0.94
Adult No Opinion	3.39 (0.80)	51	0.73

\* $p < .05$ , \*\* $p < .01$ .

Table 4

*Post-Hoc Results: Relationship between Profession and Flexibility of Approach to Offering Ultimate Issue Opinions*

<u>Conditions</u>	<u><math>\chi^2</math></u>	<u><math>\phi</math></u>
Never vs. Always	9.66 (1, $n = 62$ )**	.39
Sometimes vs. Never	.18 (1, $n = 158$ )	.03
Sometimes vs. Always	11.52 (1, $n = 150$ )**	.28

\* $p < .05$ , \*\* $p < .01$ .

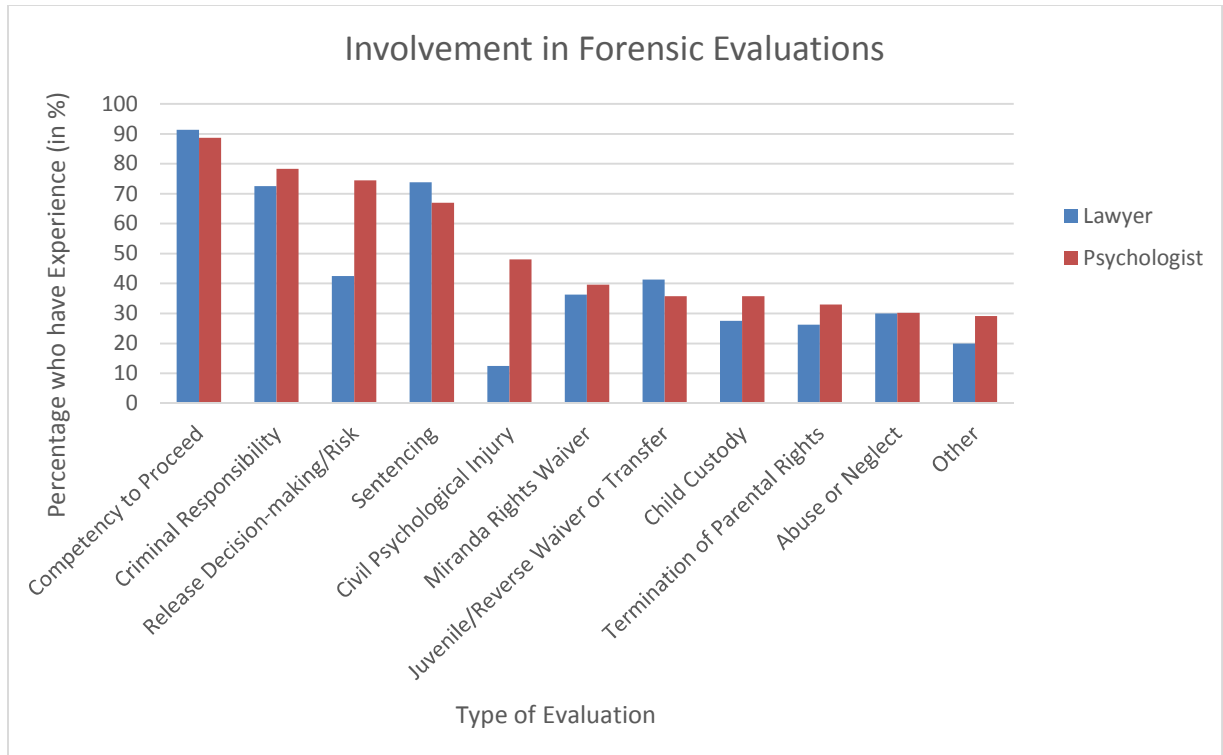
Table 5

*Post-Hoc Results: Relationship between Profession and Responsibility*

<u>Conditions</u>	<u><math>\chi^2</math></u>	<u><math>\phi</math></u>
Judge vs. Evaluating Psychologist	3.82 (1, $n = 24$ )	.040
Judge vs. Neither	1.90 (1, $n = 149$ )	.11
Judge vs. Both	1.49 (1, $n = 49$ )	.17
Evaluating Psychologist vs. Neither	1.92 (1, $n = 135$ )	.12
Evaluating Psychologist vs. Both	8.99 (1, $n = 35$ )**	.51
Neither vs. Both	10.08 (1, $n = 160$ )**	.25

\* $p < .05$ , \*\* $p < .01$ .

## Appendix B: Figures



*Figure 1.* Percentage of participants with experience conducting or requesting various types of forensic mental health evaluations.

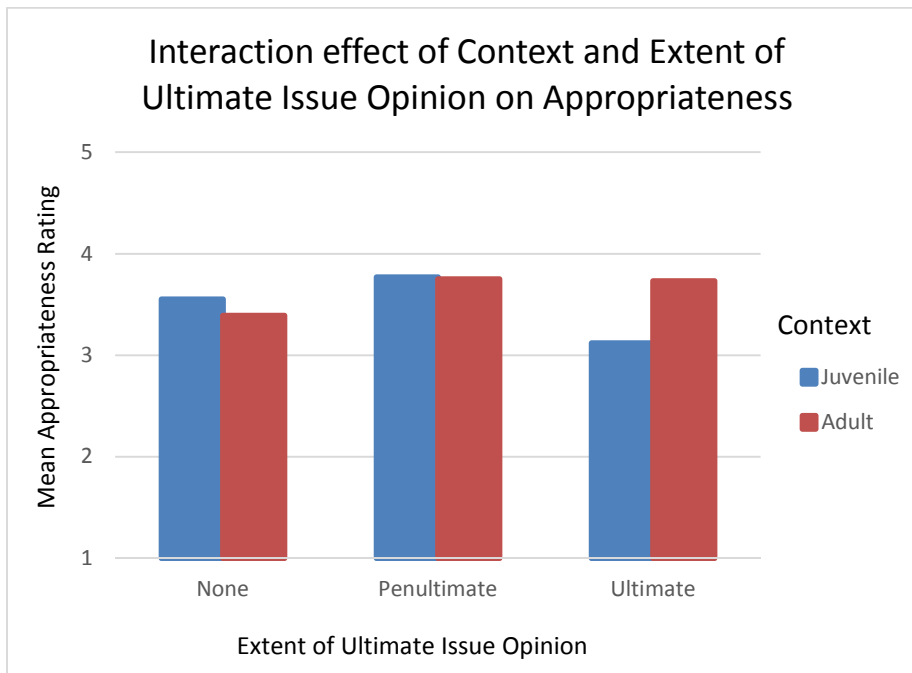


Figure 2. Mean appropriateness ratings by extent of ultimate issue opinion and context.

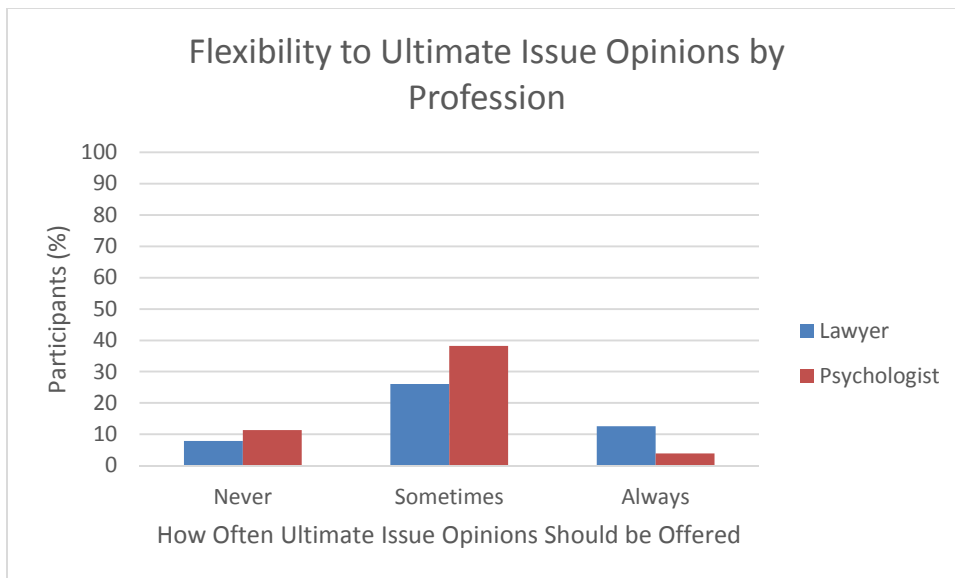
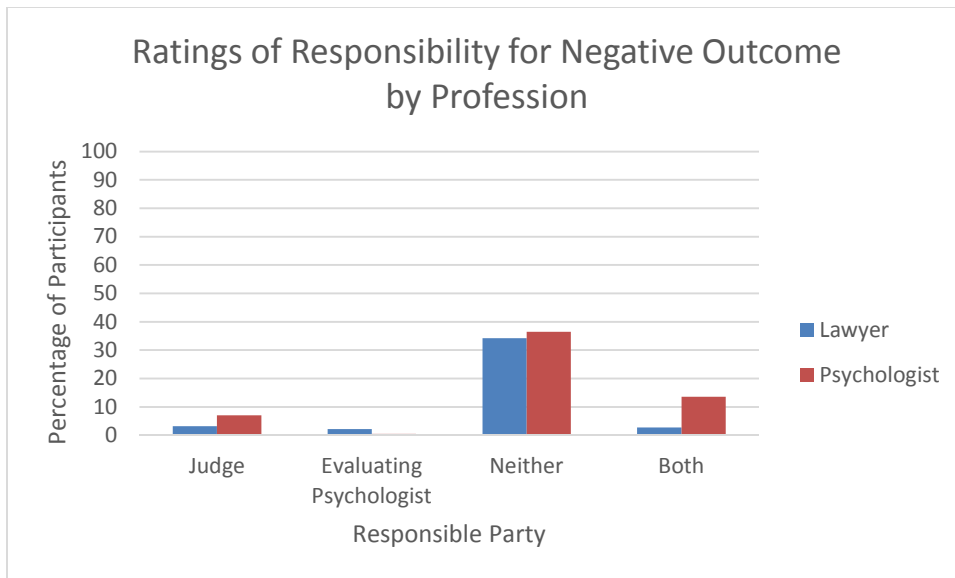


Figure 3. Percentage of participants reporting that ultimate issue opinions should be offered never, sometimes, or always as a function of profession.





*Figure 4.* Percentage of participants rating judge, evaluating psychologist, neither, or both as responsible for a negative outcome following a decision based on a forensic mental health evaluation report as a function of profession.

## Vita

### EDUCATION

#### **Drexel University**

Ph.D. Clinical Psychology, Forensic Concentration, September 2015

M.S., Clinical Psychology, September 2011

B.S., *Summa Cum Laude*, Double Major in Psychology and Criminal Justice, June 2008

#### **Thomas R Kline School of Law at Drexel University**

J.D., *Cum Laude*, May 2014

### HONORS

National Psychologist Trainee Register Credentialing Scholarship (2014)

Dissertation Grant, American Academy of Forensic Psychology (2014)

Travel Subsidy, Drexel University Office of Graduate Studies (2014)

Best Student Performance

Regulating Patient Safety, Thomas R. Kline School of Law (2014)

Medical Malpractice, Thomas R. Kline School of Law (2011)

### PUBLICATIONS

Heilbrun, K. & **Peterson, L.** (2014). Report on juvenile decertification. In K. Heilbrun, D. DeMatteo, S. Brooks Holliday, and C. LaDuke (Eds.), *Forensic mental health assessment: A casebook (2nd edition)*. New York: Oxford.

Heilbrun, K., Kelley, S., Present Koller, J., Giallella, C.L., & **Peterson, L.** (2013). Community-based forensic services: The role of the university-based clinic. *International Journal of Law and Psychiatry*, 36, 195-200.

### SELECTED CLINICAL EXPERIENCE

- **Predoctoral Psychologist Intern**, *Springfield Hospital Center (2014-2015)*
- **Psychotherapist**, *Good Shepherd Penn Partners – Cognitive Rehabilitation Unit (2013-2014)*
- **Psychotherapist**, *Drexel University Counseling Center (2012-2013)*
- **Forensic Evaluator**, *Drexel University Forensic Assessment Clinic (2011-2012)*
- **Clinical Assessor**, *Children’s Hospital of Philadelphia, Psychoeducational Assessment Services (2011-2012)*
- **Psychotherapist**, *Delaware Psychiatric Center (2010-2011)*

