# Supplementary Material

The following American law associations advertised this study with their members: National Conference of State Trial Judges, Arizona Attorneys for Criminal Justice, California Attorneys for Criminal Justice, Colorado Criminal Defense Bar, Idaho Association of Criminal Defense Lawyers, Iowa Judges Association, Kentucky Association of Criminal Defense Lawyers, Massachusetts Academy of Trial Attorneys, Minesota Association of Criminal Defense Lawyers, Mississippi Association for Justice, Missouri Association of Criminal Defense Lawyers, Association of Criminal Defense Lawyers of New Jersey, North Carolina Advocates for Justice, Oregon Women Lawyers, Oregon Trial Lawyers Association, The Tennessee Association of Criminal Defense Lawyers, Texas Criminal Defense Lawyers Association, Texas Association of District Judges, Utah Prosecution Council, Utah Defense Lawyers Association, Utah Association for Justice, Washington Defender Association, Washington Women Lawyers, Wisconsin Association for Justice.

The following Canadian law associations advertised this study with their members: The Law Society of Ontario, Toronto Lawyers Association, Women’s Law Association of Ontario, Durham Region Law Association, Manitoba Bar Association, The Law Society of Manitoba, The Manitoba Law Library, The Criminal Defence Lawyers Association of Manitoba, Canadian Bar Association – Alberta Branch, Central Alberta Bar Society, Criminal Trial Lawyers’ Association, The Trial Lawyers Association of British Colombia, Canadian Bar Association – Saskatchewan Branch, Saskatchewan Trial Lawyers Association, Canadian Bar Association – Nova Scotia Branch, Law Society of Prince Edward Island, Canadian Bar Association – Prince Edward Island Branch, Law Society of Newfoundland and Labrador, Law Society of the Northwest Territories.

# Qualitative Reflexive Thematic Analysis Supplemental Excerpts

**Table S1**

*Preference Rationales for Certain Expert Witnesses in Competency to Stand Trial Evaluations*

|  |  |  |
| --- | --- | --- |
| Themes | Subthemes | Example Excerpts |
| Formal Training and Education | Length and Type of Education | “psychiatrists have a medical degree and specific knowledge of both the physiological and psychological components about what is going on with a person. They can prescribe a wide variety of medications and have lots of schooling” (#4, civil lawyer).  “Psychiatrists have greater educational qualifications.” (#88, defense lawyer)  “Truthfully, it depends. Generally, a psychiatrist has more training and education than a psychologist. Education and training are valuable. That doesn't mean a forensic psychologist can't be more competent than a forensic psychiatrist. There are probably many who are. It just means when all things are equal except one is a psychiatrist and one is a psychologist, I would go with the psychiatrist based on the additional education and training.” (#36, prosecutor)  “psychiatrists receive a medical education, and then receive an additional year of pharmaceutical drugs pertaining to mental health. Psychologists receive classes pertaining to mental health and disorders throughout their entire coursework” (#14, defense lawyer).  “[psychologists] have more standing compared to forensic psychiatrists and social workers through their education.” (#104, defense lawyer)  “Psychologists can specialize from an early point in their education with regards to their research and experience- meaning by graduation into their field, some may have significantly more experience with regards to criminal competency standards than their psychiatrist counterparts. Many psychologists graduate having similarly completed 'residencies' of sorts, and throughout their training have significant oversight by other professionals. They graduate competent, and are similarly a part of a regulated discipline. While there may be situations where the specific education of a psychiatrist is necessary (perhaps regarding pharmaceuticals, as I understand psychologists cannot under the current provincial legislations prescribe medication) but on the whole it seems diagnoses and patient care is well within the scope of psychologist training.” (#62, civil lawyer)  “once they have earned their MD or PhD/PsyD degree and are licensed to practice, they are equally qualified” (#43, prosecutor). |
| Specialized Training in Relevant Area | “…I give the psychiatrist the edge because they are licensed medical doctors and (theoretically) have the general medical knowledge to more adequately support their opinions” (#69, judge).  “psychologists often do not have the complete picture of the underlying causes of mental illness, nuances relating to the biological roots of mental illness, effects of medication etc.” (#61, defense lawyer).  “Psychologists often have more specific trainings in competency-specific testing instruments. Additionally, when the issue is cognitive impairment, psychologists often have more training in conducting intelligence testing and competency-specific intelligence testing.” (#11, defense lawyer)  “the association/correlation of the behaviour/disorder/mental illness that a psychologist can relay to the Court is more valuable than the bio-neuro aspect of such issues that a psychiatrist is more familiar with” (#29, civil lawyer).  “…One professional may be more of an expert on the physical structure of the brain while the other is more qualified to speak on the nature and background of human behaviors and what goes on inside the mind, but both are competent to evaluate defendants as to their competency to stand trial.” (#41, prosecutor).  “When there is an issue about medications (or lack thereof) I would definitely want a psychiatrist because they can write prescriptions and psychologists cannot. If I need a neuropsychological examination of a person's cognitive functioning, a psychiatrist can't help me, but a good neuropsychologist can. Competency can be affected by both diagnosable conditions, as well as severely low IQ and cognitive dysfunction that are unrelated to a clinical diagnosis. So, these two types of experts do different things and their competency level is unrelated to their chosen field.” (#21, defense lawyer)  “Which expert to use is case dependent. A PhD May opine about unfortunate personality disorders and measured malingering. Both get to an informed conclusion but in different ways.” (#9, defense lawyer) |
| Preferential Bias Towards the MD | “Value of an MD” (#44, prosecutor)  “Having the medical degree makes them more credible, particularly to courts, prosecutors, and jurors.” (#60, defense lawyer)  “I assume that each profession has a branch that exposes it to a rigorous academic standard that allows one to profess an expertise in a given area of study. Thus the PH.D. or M.D is of little consequence when testifying. I confess to a general bias towards an M.D. where all things are equal.” (#67, civil lawyer)  “… I do believe that as an expert witness, sometimes judges/juries prefer psychiatrists given they are MDs so often their testimony may be given greater weight by the trier of fact.” (#68, defense lawyer) |
| Relevant Experience | Experience Completing CST evaluations | “It is less the specific field of study and/or initials after the expert’s name that matters to me, but the training and experience in the area of forensic mental health – and specifically competency evaluations – that is important. A well-qualified forensic psychologist is equally competent to a well-qualified forensic psychiatrist since they both have the requisite mental health training and experience in forensics and competency to stand trial. A well-qualified psychologist would be better than a less qualified psychiatrist, and vice versa.” (#32, civil lawyer)  “In performing testing and evaluations they are both competent as long as they have a significant background in performing and evaluating the results.” (#10, defense lawyer)  “… as long as they have the experience to do a full mental health and cognitive evaluation, it does not matter much to me if they are a psychologist or psychiatrist. Their experience, research and experience is more important to me.” (#19, defense lawyer)  “Again, it depends on their experience and training. I would much prefer someone with experience in this area regardless of which qualification they have, opposed to someone with no experience who puts the wrong information in their report or connects dots that don't exist (or that they shouldn't be doing).” (#39, prosecutor)  “Once they have earned their MD or PhD/PsyD degree and are licensed to practice, they are equally qualified. Thereafter, the distinction between a competent expert witness depends on the experience and on-the-job training the individual has, regardless of their educational background. The more on-the-job training and experience the individual has, the more competent that person would be as an expert witness regarding competency evaluations.” (#43, prosecutor)  “It is based on their personal experience and time and training in the area. There are psychologists that are better prepared, more experienced and make far better recommendations than their counterparts who are psychiatrists. It's not necessarily the amount of education and more the experience of the individual.” (#82, judge) |
|  | Understanding of Issues Relevant to CST | “I think knowledge of the effects and uses of psychopharmaceuticals is crucial in understanding criminal behavior in the legal setting” (#16, defense lawyer).  “They can both provide expert testimony which informs the legal test for competency. The court is not looking for a formal diagnosis of medical issues, but rather asking whether the defendant is able to participate in the proceedings in a meaningful way as to the minimum standards of fairness and principles of fundamental justice. I believe either a forensic psychologist or psychiatrist could provide these assessments, and I have seen both occur.”  (#23, civil lawyer).  “both disciplines include the concepts and principles to assess mental state in light of the correct legal standard in a holistic, searching manner” (#53, defense lawyer)  “the evaluation involves certain concepts and issues that are true for both professions” (#74, judge).  “I believe they both can evaluate whether a defendant is able to aid and assist in the defense of their case and can evaluate if the client has the mental capacity to understand the nature of the proceedings” (#89, defense lawyer)  “I believe that both are equally competent to complete ‘competency evaluations’ as they are an assessment which requires individuals who are subject matter [experts] in psychological disorders to provide their complete assessment of an individual. The information and assessment required in a ‘competency evaluation’ falls under the scope of practice for both individuals...” (#84, civil lawyer).  “I guess, why wouldn't they be? Maybe if the expert had unlimited money for brain scans a psychiatrist would be better able to suss out physical brain problems than a psychologist would. But in practical terms both of them are just interviewing the client and looking at records, and I don't see why they would be differently able to do that” (#40, defense lawyer)  “doctorate level training with clinical training in psychology is sufficient for competency to complete competency evaluation and is as good (medically) as an evaluation by a psychiatrist.” (#46, civil lawyer)  “They have valuable insights all based on the same scientific foundations, but one can prescribe medications and one cannot. That seems silly in a judicial context. I think the right expert depends on the facts of the case, and if there are experts in their respective fields of psychiatry or psychology that specialize in whatever type of issue/person you have in your case. No two cases are the same.” (#47, civil lawyer) |
| Quality of Evaluations |  | “This has been my experience. I do many court appointments and the competency to stand trial evaluations have been far more superior by forensic psychiatrists rather than psychologists who produce the same report for each case and just plug in the name of the defendant, case number and certain different facts. Perhaps it is because they are paid less; I am not sure.” (#80, defense lawyer)  “My sense is psychologists have a more wholistic, nuanced approach and would be able to explain not just a diagnosis and symptoms but explain other background factors/experiences that may affect client’s behavior” (#71, defense lawyer)  “I think psychology provides better background in detailed evaluation than psychiatry. I like both fields, but I find psychiatrists tend to want to diagnose, prescribe, then just watch. Psychologists tend to be more deeply involved and engaged in cases” (#103, civil lawyer).  “Again, I have been involved with several competency evaluations and I believe all but one were forensic psychologists; the one other was an eval done by a psychiatrist at the state hospital, a staff doc. Frankly, certain of the psychologists were reputationally more respected and their evaluations were thorough and well-reasoned.” (#75, defense lawyer)  “…Personally, I would find an expert who is able to present their opinion in a clear and unbiased way preferable be they a psychiatrist or psychologist” (#68, defense lawyer)  “I have worked with far more forensic psychologists than psychiatrists, but in my experience the quality of the work, information, and credentials as it pertains to my use of both as expert witnesses are similar.” (#93, defense lawyer)  “… I read youth forensic reports every week and sometimes they are authored by psychiatrists and sometimes psychologists. The quality of the reports are the same. They both diagnose and make recommendations.” (#98, defense lawyer) |

*Note. N* = 122 participants.

**Table S2**

*Justification or Opposition of the Pay Discrepancy between Forensic Psychologists and Psychiatrists*

|  |  |  |
| --- | --- | --- |
| Themes | Subthemes | Example Excerpts |
| Educational Hierarchies | Hierarchy of Degree and Biases Towards the MD | “A medical degree is a higher level in the profession and sets psychiatrists apart, earning them a higher fee” (#11, defense lawyer).  “A medical degree is more difficult to obtain and perceived as more desirable. Moreover, medical doctors tend to be perceived as more authoritative than non-medical doctors.”(#26, civil lawyer).  “Medical school training is more persuasive and held to a higher authority than most PhD and all PsyD programs”(#46, civil lawyer).  “One is a medical doctor, the other isn't. A higher level of education should be compensated for.” (#113, defense lawyer)  “Psychiatrists are doctors in addition to the training in psychology. They can factor in physiological/medical issues and generally carry more weight with the finder of fact due to their education and training.” (#90, defense lawyer)  “Because its a bias toward a medical education that is pervasive throughout society”(#34, prosecutor)  “Psychologists have lesser educational qualifications.” (#96, defense lawyer)  “Psychologists may not go to medical school, but they have to get a PhD in their field, and that is just as grueling, just in a different way. Psychologists are just as worthy as psychiatrists of fetching the same pay” (#47, civil lawyer).  “an MD is no more qualified than a PhD” (#108, civil lawyer) |
|  | Importance of Medication | “The extra education and training, and ability to prescribe medicine justify the discrepancy in pay” (#42, prosecutor)  “A psychiatrist normally has a greater understanding of the medical aspects of mental illness given their medical education and background. They also have the ability to prescribe medication which, in many organic brain chemistry based mental health conditions, is a necessary part of a successful treatment program.” (#59, judge)  “Mental health doctors are better at what they do because they prescribe things to help them meanwhile psychologists talk to them but don’t do other things to help them” (#81, judge)  “Because I believe that there is a higher risk (& more education required on pharmacology and physiology) associated with medical practice as an MD versus that of a clinical psychologist (PhD). While there is most certainly still a risk of substantial and real harm to patients of a psychologist, there is a greater risk to life and body when doing things like prescribing medication.” (#84, civil lawyer)  “I would get paying psychiatrists more in a medical context where their ability to prescribe stuff is a value-add. but in a courtroom that distinction doesn't have an impact [in my opinion].” (#40, defense lawyer)  “Because this is not about prescription drugs; it's about what's wrong with this guy and does it impede his ability to assist in his own defense.” (#97, defense lawyer) |
|  | Length and Cost of Degree | “The amount of education and training for a psychiatrist is significantly more than a psychologist.” (#10, defense lawyer)  “Psychiatrists go to medical school which takes longer and is more demanding” (#52, civil lawyer).    “Higher investment in education” (#94, defense lawyer)  “Because the psychiatrists are probably in way more debt from having to attend medical school” (#98, defense lawyer).  “The medical training is more expensive and permits the testimony regarding some medical issues that psychologists may not be able to provide.” (#17, defense lawyer)  “I believe psychiatrists attend more schooling. I think (although I'm not sure) that most psychologists do a 4 year bachelor followed by a 2 year master and a 2-3 year PhD. Whereas a doctor does 4 years of undergrad 4 years of medical school, several years or residency, and then often additional years of specialization.” (#25, defense lawyer)  “I believe that psychiatrists carry greater weight from judges inclined towards school snobbery and that they are likely to need more time in training and have incurred a greater cost in obtaining their degree and credentials” (#3, civil lawyer)  “Psychologist has training equal in length to an MD” (#102, defense lawyer)  “Psychologists spend nearly as much time training (i.e. in school) as psychiatrists. Trained forensic psychologists are well-equipped to provide expert evidence on the issues of fitness and NCR [not criminally responsible] and do the actual psychological testing” (#63, lawyer, legal counsel to the court). |
| Expertise and Work Quality | Level of Expertise | “The psychiatrist has greater training and experience.” (#33, prosecutor).  “Lack of expertise on the part of psychologists.” (#44, prosecutor)  “They are doing essentially the same work with the same training. Often the psychologist is more useful.” (#77, defense lawyer)  “They are both skilled professionals offering expertise to the court in an area otherwise mysterious to lay people” (#88, defense lawyer)  “As an expert witness, one is as expert as the other.” (#76, civil lawyer)  “The rates should be based on the level of competence” (#6, defense lawyer). |
|  | Quality of Evaluations | “[psychiatrists] have a deeper and more comprehensive understanding of mental health issues.” (#45, defense lawyer)  “Psychologists as a general rule spend far more time with their clients, and focus more on psychological factors than compared to medical/mechanical disfunction.” (#100, civil lawyer)  “[Psychiatrists have] more training and a better, more convincing testimony.” (#30, civil lawyer)  “Psychiatrists have been less able to engage and connect with clients on a human level” (#24, defense lawyer)  “They can provide the same information.” (#95, civil lawyer) |

*Note. N* = 63 participants.

**Deposition and excerpt of competency to stand trial report**

Independent variables:

1. **Profession:** **psychologist** / **psychiatrist**
2. Gender: **woman** (she/her) / **man** (he/him)
3. Level of experience: **low** (completes approximately 10 competency evaluations annually) / **high** (completes approximately 65 competency evaluations annually)

**American Condition**:

A court-ordered competency to stand trial evaluation was completed by Dr. [insert gender: Samuel, Samantha] Brown, [insert gender: he is/she is] a licensed [insert profession: forensic psychologists/forensic psychiatrist]. Please read the following deposition and [insert gender: his/her] competency assessment report carefully.

Q: Doctor, can you tell me about your educational attainment?

Dr. [insert gender: Samuel, Samantha] Brown: [insert profession condition: **forensic psychologist (PhD):** First, I completed my Bachelor of Arts with an honors. Then I went on to complete my Master of Arts and PhD in clinical-forensic psychology. In this process, I completed several practica placements, various classes pertaining to general clinical psychology, such as therapeutic intervention and assessment and psychopathology, as well as classes specific to forensic psychology. To earn my degree, I completed a 1-year internship (or residency) and then also completed a 1-year postdoctoral fellowship in forensic psychology. /**forensic psychiatrist (MD):** First I completed my Bachelor of Science with an honors. Then I went on to complete my MD, followed by a 4-year psychiatric residency. Following my psychiatric residency, I completed a 1-year forensic psychiatry subspecialty fellowship.]

Q: What is your experience with completing competency to stand trial evaluations?

Dr. [insert gender: Samuel/Samantha] Brown: [insert level of experience: **low**: I have completed some competency evaluations. Generally, I complete approximately 10 competency to stand trial evaluations annually / **high**: I have completely numerous competency evaluations. Generally, I complete approximately 65 competency to stand trial evaluations annually.

**Abridged Report**

DIAGNOSTIC IMPRESSIONS

Schizoaffective disorder

COMPETENCY TO STAND TRIAL

My competency opinion is based upon two major considerations:

(1) the nature and severity of the defendant’s current mental problems and

(2) the present impact of any mental disorders on those of defendant’s functional capacities that are important for competent performance as a defendant in criminal proceedings.

Regarding his ability to understand the nature of the legal proceedings, Mr. Smith identified his charge as “Assault.” He reported some understanding of the various courtroom participants (i.e., the judge, defense attorney, district attorney, and witnesses), but also infused delusional thinking in his answers, “The judge is the overlord of the courtroom and will sentence me to the guillotine.” He understood guilty and not guilty pleas. He offered delusional and disorganized thinking when discussing plea bargains. He was uncertain who his attorney was, saying, “They told me it was Jack, but I’m pretty sure it was a girl. I’m not trying to sell any algorithms now, so they’re trying to gain citizenship through a female identity. If it’s a sister, it doesn’t matter.” When asked what he meant by a sister, Mr. Smith stated, “We enroll with the king. One king, who’s in charge and what he says goes.” At another point he stated, “I’m practicing as my own attorney.” After additional nonsensical statements, Mr. Smith terminated the interview.

During the course of this evaluation, Mr. Smith was not able to express himself in a rational manner and did not communicate his interests effectively. He exhibited rapid speech that quickly moved from one unrelated topic to the next. It is unlikely that he would be able to communicate effectively with defense counsel. At the time of this evaluation, his symptoms of mental disorder impaired his perception, reasoning, motivation to defend himself, and ability to communicate. It is my opinion that due to ongoing psychiatric symptoms, Mr. Smith, lacks the capacity to understand the proceedings against him and to assist in his own defense.

Barriers to Competency:

The following deficits would interfere with Mr. Smith’s ability to understand the nature of the proceedings against him or his ability to assist counsel:

• Disorganized and delusional thinking will impair his ability to rationally discuss the instant offense, plea options and other defense considerations. It will also interfere with his ability to process information in a goal-directed manner.

• Elevated, unstable affect will likely impair his ability to focus in hearings and may result in inappropriate behavior in court

• Poor judgment, as a result of these psychiatric symptoms, increases his risk of legal-related decisions that are impulsive and ill-conceived

• These symptoms would negatively impact his ability to testify coherently and rationally should such be the direction of his case.

Restoration Opinion:

Should the Court find that Mr. Smith is not competent to stand trial, inpatient psychiatric treatment is recommended. The likelihood of successful restoration would be improved if he started taking psychotropic medications prior to admission.

**Canadian Condition**

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This vignette was created using example competency to stand trial reports from the Office of Forensic Mental Health Services:

Office of Forensic Mental Health Services. (2019). *Forensic evaluation report guidelines: competency to stand trial.* <https://manuals.dshs.wa.gov/sites/default/files/BHSIA/FMHS/OFMHS-MAN-012-Forensic-Evaluation-Report-Guidelines-Competency-to-Stand-Trial-04SEPT2019.pdf>