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What judges and lawyers think about the testimony of mental health experts: a survey of the courts and bar.

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Abstract

The testimony of mental health experts is often important evidence considered by criminal courts in determining issues arising throughout the adjudicative process, but not all evidence provided by experts is equally valid or probative. Using a hypothetical insanity defense case, we compared the preferences of Virginia judges, prosecutors, and defense attorneys for different types of forensic mental health evidence, including descriptive and diagnostic testimony, testimony about relevant research and actuarial data, and ultimate issue testimony. In addition, we determined their preferences for different types of mental health professionals. Four key findings emerged. First, many participants preferred that psychiatrists, rather than psychologists or other mental health professionals, conduct forensic evaluations for the court. Second, while participants were interested in most types of mental health evidence, they were primarily interested in clinical diagnosis, followed by an analysis of whether the condition met the relevant legal threshold, and an ultimate opinion on the legal issue. Third, participants were less interested in research or actuarial evidence. Fourth, participants differed in their evidentiary preferences in ways that reflect their respective roles in the adversary system. The findings suggest that while courts and attorneys find traditional clinical testimony useful in criminal cases, they also favor ultimate issue testimony, and view research data or statistically based information as less helpful. Mental health professionals should consider how to educate the courts and bar about the dangers inherent in over-reliance on the conclusory legal testimony of mental health experts, the utility of scientific data as such information becomes more routinely introduced as evidence at trial, and the expertise available from various mental health professionals.

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