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Attorneys' and Judges' Needs for Continuing Legal Education on Mental Disability Law: Findings from a Survey

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Attorneys' and judges' needs for continuing legal education on mental disability law: findings from a survey

BY DOUGLAS MOSSMAN, M.D.
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Attorneys leave law school with limited knowledge and skills concerning the issues that arise in mental disability law. Yet psychiatrists and psychologists are appearing with increasing frequency as witnesses in the nation's courts, and more attorneys and judges can therefore expect to have to deal with testimony from mental health professionals. To our knowledge, this article is the first published assessment of practicing attorneys' and judges' needs for continuing legal education (CLE) on mental disability issues.

The 267 Dayton-area attorneys and 41 southwestern Ohio judges who responded to our mailed survey said that one-seventh of their cases raise issues related to mental health or mental disability.

(continued on next page)

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Most responders had not taken any law school courses that dealt with mental disability issues; those who had said their courses were only modestly helpful. CLE was the attorneys' and judges' principal source of information about mental disability law. For practicing attorneys, perceived need for CLE was related to the rate at which psychological issues arose in their practices; practicing lawyers and judges were interested primarily in CLE topics that related to the types of cases they handled or heard. Three-fourths of the attorneys and 95% of the judges said they would probably or definitely attend locally offered CLE on at least one subject.

Our findings are consistent with the hypothesis that traditional law school course work relating to mental disability does not give future attorneys and judges the skills and knowledge necessary to their practices (e.g., the ability to challenge expert witnesses); CLE might help remedy this deficiency. Legal educators should use our findings when thinking about law school course content and postgraduate legal education.

Psychiatric and psychological evidence is becoming a factor in a broadening variety of civil suits. The courtroom use of mental health professionals has long been common in criminal, domestic relations, and personal injury cases.¹ However, lawyers have recently extended their use of psychiatric and psychological testimony to new areas, including medical malpractice and workplace discrimination and harassment.² Courts have sometimes excluded novel forms of mental health testimony because they were imprecise or because the conclusions presented by witnesses fell outside their expertise.³ However, the U.S. Supreme Court's 1993 *Daubert* ruling⁴ appears to have broadened the potential admissibility of mental health professionals' opinions,⁵ which implies that practicing attorneys increasingly will need to present and challenge such testimony.

Attorneys leave law school with limited knowledge about issues that arise in mental disability law and limited skills in handling them. Scholars who have examined the role of counsel in mental disability cases have often found that attorneys performed abysmally,⁶ and that simply giving attorneys factual information does not improve their performance.⁷ Although there are several good legal texts on mental disability law,⁸ and although courses on the subject are offered at many law schools, law students are not required to study these issues. Practicing attorneys have no specific requirements to obtain postgraduate education in this area.

This article reports results from a mailed questionnaire that surveyed attorneys and judges from the Dayton, Ohio area about their perceived needs for continuing legal education (CLE) on mental disability issues. When we searched the LEXIS, MEDLINE, and PSYCINFO databases in early 1996, we could find no articles that attempted any systematic assessment concerning CLE related to mental disability.⁹ Telephone conversations with several nationally recognized experts¹⁰ in mental disability law confirmed this lack. We therefore believe this is the first attempt to report systematically gathered findings about practicing attorneys' and judges' perceived needs for CLE in this area. Besides asking questions about the need for CLE, the survey sought information about the types of client matters those attorneys handle, responders' contacts with mental health professionals and their use of mental health professionals as expert witnesses, and attorneys' criteria for selecting experts. Findings concerning contacts with and selection of mental health experts are the focus of a separate article.¹¹

Methods

In May 1996 the authors conducted a mail survey of the 1,353 attorneys listed in the Montgomery County section of the 1995 *Ohio Legal Directory*¹² and of the 105 trial-level

judges in Ohio Districts 2 and 12 who were listed in the 1995 *Ohio Judge Directory*.¹³ Located in southwestern Ohio, Montgomery County (population 600,000) includes the city of Dayton and several suburbs. Appellate Districts 2 and 12 are comprised of Montgomery County and 13 surrounding counties; this geographic area contains medium-sized and small cities, suburbs, and farming communities.

The questionnaires explored responders' education on law and mental disability, their frequency of encountering psychological issues in their work, their interest in mental disability-related CLE, and their contacts with mental health experts. The first portion of the Attorney Survey asked for demographic information (age, sex, law school, and years in practice), major areas of legal practice, and law school education concerning mental disability issues. Subsequent sections asked attorneys about the number and frequency of client matters related to mental health or disability, and the frequency with which the respondents had sought mental health expert opinions. Those attorneys who said they had used mental health experts completed the next portion of the survey, which had them rate the importance of several factors when they retained mental health experts.

The final sections of the Attorney Survey asked respondents about their sources of information and perceived need for CLE on mental disability law; the questionnaires also asked about attorneys' potential interest in attending locally offered two- to three-hour CLE courses on 21 listed topics. Attorneys rated their overall need for CLE on a four-point scale (0 = "not at all," 1 = "a little bit," 2 = "moderately," 3 = "very much"); they also rate their willingness to attend particular CLE courses on a four-point scale (0 = "would not attend," 1 = "might attend," 2 = "probably would attend," 3 = "definitely would attend").

The Judge Survey contained questions similar to the Attorney Survey's inquiries about demographics, legal education, and

need for CLE. Judges also were queried about the types of cases they heard, the frequency with which their cases raised questions concerning mental health and mental disability, and the judges' beliefs about how the attorneys appearing before them selected mental health experts.

Each survey was designed so that it used just two sides of an $8\frac{1}{2} \times 14$ -inch page and required less than five minutes to complete. No personal identifiers were linked to the survey forms, and the responders' identities remain unknown to the authors. The surveys were mailed with business reply envelopes and two cover letters that explained the purpose and voluntary nature of the survey. The participants also were assured that published reports of findings would preserve individual responders' anonymity.

Results

Two hundred sixty-seven attorneys and forty-one judges mailed back completed survey forms. The post office returned thirteen of the 1,353 Attorney Surveys; if one assumes that the remaining 1,340 forms were received, the attorney response rate was 19.9%. None of the 105 Judge Surveys was returned unopened, implying a 39% response rate.

Demo-
graphics,
practice
patterns, and
frequency of
encountering
mental
disability

The attorney responders had been in practice 16.6 ± 10.8 years, and the judges who responded averaged 9.7 ± 7.3 years' experience on the bench. Judges had graduated from law school an average of eight years before the practicing attorneys. The two groups said that they encountered many types of legal matters—domestic relations, bankruptcy, insurance, medical malpractice, labor issues, real estate, personal injury, and juvenile issues—at similar frequencies. However, more judges than practicing attorneys dealt with criminal cases (71% vs. 26%, $z = 5.7$, $p < 10^{-7}$ [two-sided]), and more attorneys than judges handled estate cases (31% vs. 12%,

$z = 2.66$, $p = 0.008$ [two-sided]). One hundred eighty-seven (70.0%) of the responding attorneys had attended Ohio law schools.

Concerning the proportion of their cases that raised issues related to mental health or mental disability, both attorneys and judges reported a *median* response of 5% and an *average* rate of about one in seven (attorneys' average = $14.9 \pm 20.0\%$; judges' average = $13.7 \pm 16.7\%$).¹⁴ While a fourth of the attorneys reported that psychological issues arose in fewer than 2% of their cases, only an eighth of the judges reported a rate this low. The seven judges who said they heard cases involving juveniles thought that psychological issues arose a third of the time; the other judges said that such issues arose in just a tenth of cases. About one-fourth of the attorneys and judges said that psychological issues were important in 20% or more of their cases.

Just over half of the practicing attorneys had sought a mental health professional's opinion at least once in the previous year; one-fifth of them had made six or more such inquiries. It thus appeared that a sizable minority of attorneys specialized in areas of law that frequently raised mental health and mental disability issues, while most attorneys encountered—or noticed—these issues only occasionally.

Women attorneys said that on average one-fifth ($19.9 \pm 24.9\%$) of their client matters raised mental health or mental disability issues, a significantly higher fraction than was reported by men ($13.4 \pm 18.0\%$; $t = 2.17$, $df = 253$, $p = 0.040$ [two-tailed]). However, men and women reported that during the preceding year they had handled similar *numbers* of client matters that involved psychological issues (12.5 ± 28.2 for men, 15.5 ± 28.2 for women). Also, the number of times they had participated in client matters that involved experts' report or testimony (10.3 ± 22.9 for men, 18.1 ± 29.6 for women) did not differ significantly ($t = 1.88$, $df = 193$, $p = 0.062$ [two-tailed]).

Educational issues Over half (56%) of the judges and two-thirds (67.3%) of the practicing attorneys said they had taken *no* law school course on topics specifically related to mental health or mental disability. The average number of such courses taken by judges (0.71 ± 1.17) was not significantly higher than the practicing lawyers' average of 0.45 ± 0.79 ($t = 1.82$, $df = 305$, $p = 0.070$ [two-tailed]). Most attorneys (61%) and judges (56%) who had taken such courses said they were "somewhat helpful," but only 11% of the attorneys and 17% of the judges said their course work had been "very helpful" or "essential" in their current work. The lawyers' ratings of the value of their law school courses were positively correlated with the percentage of cases that they said raised psychological issues ($\rho = 0.227$, $z = 2.015$, $p = 0.044$ [two-sided]). In other words, the higher their answers concerning the percentage of cases that raised psychological issues, the higher their ratings of the usefulness of their course work on mental disability and the law. The judges' answers, by contrast, yielded no such correlation.

When we compared the practicing attorneys who had taken law school courses on mental disability topics with those who had not taken such courses, we found no significant differences in the percentage or number of client matters that raised psychological issues, the frequency with which attorneys retained or dealt with testimony by mental health experts, or attorneys' perceived need for CLE on law-mental disability issues. Neither attorneys' nor judges' ages were correlated with perceived need for CLE. Women did not differ from men in the number of mental disability-related law school courses they had taken, nor in their perceived need for CLE.

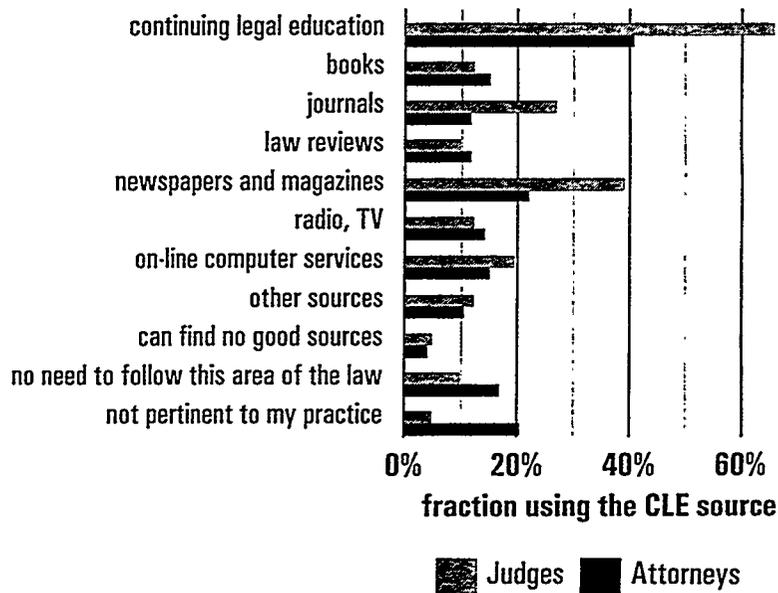
We found several significant differences, however, among subgroups of attorneys when we categorized them by the types of client matters that they handled. The 15 attorneys whose major practice areas were workers' compensation or Social Security said that almost half their client matters involved psychological issues; some of these attorneys

reported dealing with “hundreds” of mental disability matters each year. Although they were no more likely to have taken relevant law school courses, their current perceived need for mental disability-related CLE was (not surprisingly) much higher than the other attorneys’ (1.93 ± 0.83 vs. 1.22 ± 0.97 , $t = 2.69$, $df = 258$, $p = 0.0076$ [two-tailed]).

Similarly, the 74 attorneys who handled domestic relations cases rated their need for mental disability-related CLE significantly higher than the remainder of their colleagues (1.60 ± 0.95 vs. 1.13 ± 0.95 , $t = 3.57$, $df = 258$, $p = 0.00043$ [two-tailed]). So did the 57 lawyers who did criminal defense work (1.79 ± 0.82 vs. 1.11 ± 0.96 , $t = 4.84$, $df = 258$, $p = 0.0000022$ [two-tailed]) and the 42 attorneys who handled cases involving juveniles (1.86 ± 0.84 vs. 1.15 ± 0.94 , $t = 4.50$, $df = 258$, $p = 0.000010$ [two-tailed]). For the full group of responding attorneys, perceived need for CLE on mental disability was strongly correlated with the percentage of client matters raising psychological issues, the number of client matters that raised such issues, the frequency with which they saw reports or heard testimony from mental health professionals, and the frequency with which they retained mental health experts (in all cases, $z > 6$, $p < 10^{-8}$). By contrast, the judges’ ratings of their need for CLE were *not* correlated with the percentage of their cases that involved psychological issues ($\rho = 0.053$, $df = 36$, $z = 0.32$, $p = 0.73$ [two-sided]).

Figure 1 shows the percentages of practicing lawyers and judges who used various resources as their current sources of information on mental disability law issues. For both groups, CLE was the most-cited source, and newspapers and magazines were the second most popular source. About one-fifth of the practicing attorneys said that mental disability law was not important to their practices or that they had no need to follow this area; fewer than a tenth of the judges felt this way. Figure 2 shows the judges’ and attorneys’ ratings of their needs for CLE; the judges’ ratings were significantly

FIGURE 1
Percentages of judges and attorneys who endorsed listed sources of CLE on mental disability law



higher than the responding attorneys' ($\chi^2 = 19.35$, $df = 3$, $p = 0.00023$). A fourth of the practicing lawyers said they did not need additional CLE on mental disability issues, but no judge answered this way.

Figure 3 lists the 21 specific CLE topics about which the surveys inquired, and shows the fractions of responders who said they "probably would attend" or "definitely would attend" locally offered CLE courses on each topic. Almost half of the practicing attorneys said they probably or definitely would attend a session on "challenging the reports and testimony of mental health experts." The most popular courses for the judges—most of whom heard criminal cases—were the sessions dealing with competence to stand trial, sentencing, and psychiatric defenses.

FIGURE 2
Self-ratings of attorneys' and judges' needs for CLE on mental disability law (left axis: attorneys; right axis: judges)

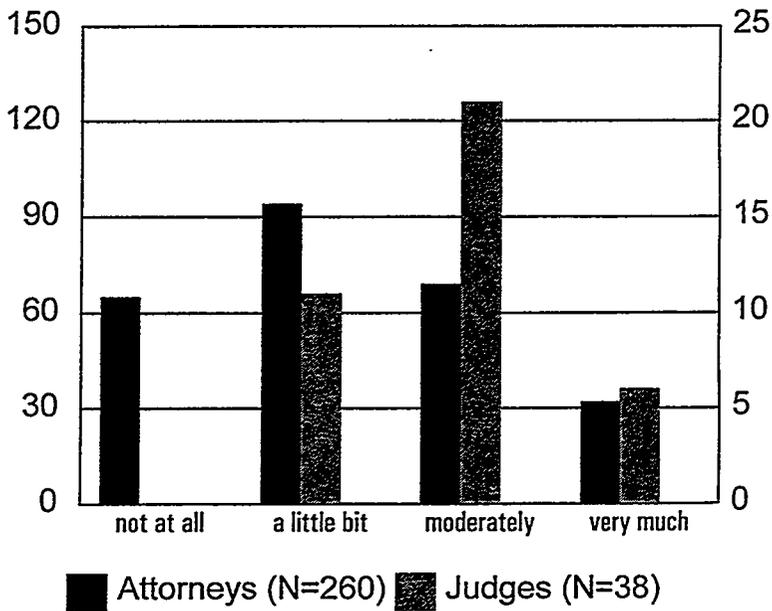
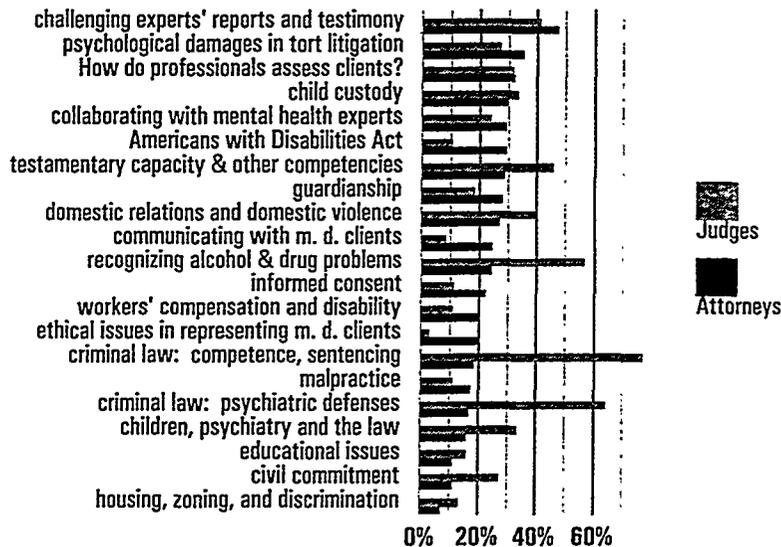


Figure 3 may be misleading, because it appears to show that most topics generated only modest enthusiasm. In fact, 199 (74.5%) of the practicing attorney responders and 39 (95%) of the judges said they probably or definitely would attend CLE on at least one listed topic. The 199 practicing attorneys who said they would probably or definitely attend reported that a far greater percentage of their cases (18.2 ± 21.1) involved psychological issues than did the remaining 68 attorneys (4.50 ± 10.9), and this difference was highly significant ($t = 5.12$, $df = 265$, $p < 10^{-6}$ [two-tailed]).

Responders expressed selective interests, however, saying that they would attend only courses that directly affected their practices. For example, the attorneys who handled disability and workers' compensation matters gave much higher

FIGURE 3

Percentages of judges and attorneys who said they “probably” or “definitely” would attend CLE courses dealing with the listed topics (“m.d.” = mentally disabled)



ratings (2.27 ± 0.96) to this topic than did the other attorneys (0.556 ± 0.885 , $t = 7.21$, $df = 227$, $p < 10^{-11}$ [two-tailed]); they also were significantly more interested in the “challenging mental health experts” topic than other attorneys (2.13 ± 0.74 vs. 1.34 ± 1.17 , $t = 2.56$, $df = 237$, $p = 0.011$ [two-tailed]), presumably because many of their cases involved dealing with psychological matters. Attorneys who handled personal injury cases expressed greater interest than the remaining attorneys in courses on liability, malpractice, psychological damages, and challenging experts; prosecutors were interested in the criminal law topics; labor lawyers expressed interest in CLE on the Americans with Disabilities Act; attorneys handling real estate matters had higher-than-average interest in guardianship and competence issues.

Some groups of practicing lawyers—those who handled domestic relations cases, estate matters, criminal defense cases, and juvenile issues—expressed above-average interest in several topics. The explanation may lie in the fact that these individuals usually reported accepting cases in a variety of practice areas; also, these attorneys may have chosen their areas of legal practice because of a preexisting higher-than-average interest in psychological and emotional issues.

To gauge how well practicing attorneys handled mental health expertise, the Judge Survey asked responders what percentage of attorneys appearing in their courts used the opinions and information supplied by mental health professionals “poorly or ineptly,” “acceptably,” “pretty well,” or “skillfully.” (The total of these percentages was to sum to 100%.) Judges gave a wide range of responses, suggesting a diverse array of experience or very differing standards and perceptions. For example, the average response for “poorly or ineptly” was 19.7%, but judges’ responses ranged from 0% to 90%. The average for “acceptably” was 41.7% (range: 0%–95%); for “pretty well,” 27.6% (range: 0%–100%); and for “skillfully,” 10.9% (range: 0%–50%).

Discussion

Interpretations of the above results must be offered cautiously. Survey responders were drawn from a single mid-size Midwestern city and surrounding areas. The educational backgrounds, experiences, perceptions, and CLE needs of lawyers who work in large metropolitan areas or rural areas may be very different from those of this study’s participants.

The low rate of response is a second reason for interpreting findings cautiously, especially the findings from the Attorney Survey.¹⁵ However, although only a fifth of the attorneys responded, we received an absolute number of responses that was large enough to allow several highly significant statisti-

cal inferences. Also, because the judges and attorneys said that similar fractions of cases raised mental health or mental disability issues, we feel that our data allow for sound inferences about the relationships between practice experience and educational needs. Furthermore, the reported distributions of the types of cases seen by attorneys and judges closely match the distributions of cases and practices in the Dayton area. For example, one-fifth of the Montgomery County attorneys responded, and 11 of those attorneys—one-fifth of the number of attorneys who do criminal prosecution work in Montgomery County—said criminal prosecution was a major area of practice. Our findings therefore seem representative of Dayton-area attorneys; however, a higher response rate would have allowed us to state this more confidently.

Although more than two decades separate our 1996 surveys from the survey conducted in 1975,¹⁶ several findings were strikingly similar (an additional point supporting our study's validity). Just over half of our attorney responders had sought a mental health professional's opinion in the previous year, a proportion very similar to the 57% reported by Benedek and Selzer when they surveyed Ann Arbor, Michigan, attorneys. Benedek and Selzer reported that 30% of responders made nine or more referrals a year, and that 3% sent more than 50 clients for evaluation; among attorneys responding to our survey, one-fifth had made six or more referrals in the previous year, and 4.3% had initiated evaluations for 50 or more clients.

Although mental disability issues were thus a major part of practice for only a fifth of our study's attorney responders, three-fourths of the practicing attorneys and 95% of the judges said they probably or definitely would attend at least one locally offered CLE course on mental disability law. If (as seems likely) recipients who were especially interested in psychological issues were more likely to return completed questionnaires, then the actual level of interest among all Dayton-area lawyers is probably lower. However, even if the

true level were only half of that registered in our survey, this would be a striking finding and would confirm reports that psychological issues figure importantly in a broadening variety of legal matters. Coupled with our finding that CLE was the responders' principal source of information about advances in mental disability law, this would suggest that legal educators who wish to improve the representation received by mentally disabled clients might do so through additional CLE offerings on psychiatric and psychological topics.

CLE might also increase attorneys' and judges' awareness of mental disability issues that they presently encounter but do not recognize. We say this because we found great differences within comparable subgroups of responders (e.g., those who handled similar types of cases) in the frequency with which they thought psychological questions arose. For example, the lawyers who handled personal injury matters said that mental health/disability issues arose in $17.8 \pm 20.4\%$ of their cases—a very broad distribution of answers. Similarly, criminal court judges said that mental health/disability issues arose in $9.7 \pm 13.2\%$ of the cases they heard. Although actual differences in types of cases may fully explain these broadly distributed answers, we suspect that differing sensitivity to emotional issues probably played a large role in generating such large variances. Medical research shows that primary care physicians frequently do not detect common treatable emotional disorders (e.g., depression) in their patients.¹⁷ We should therefore expect that attorneys—who do not have clinical training—would often be unaware of the (potentially legally relevant) emotional problems affecting their clients.

The surveys yielded four other salient findings: (1) lawyers and judges were mainly interested in CLE topics related to their areas of practice; (2) among practicing attorneys, the most popular CLE topic was “challenging the reports and testimony of mental health experts”; (3) those attorneys and judges who had taken law school classes dealing with mental

disability reported that these courses were only modestly helpful in their current work; and (4) there was no correlation between the number of classes on mental disability taken by judges and attorneys and the percentage of their cases that raised psychological issues.

One can offer several explanations for these findings. For example, a student's choice of courses in law school may depend on course availability rather than preference; hence it should surprise no one to find a lack of correlation between number of school courses dealing with mental disability and percentage of "psychological" cases encountered in a lawyer's practice. Similarly, a lawyer's choice of practice emphasis may not reflect pre-graduation interests so much as availability of jobs after graduation. Also, students may not realize how important (or unimportant) psychological matters will later be, and may not choose courses with this issue in mind. The "challenging" topic may have been most popular because this is a skill that lawyers do not get from reading, but from hearing about it and seeing it demonstrated.

Another explanation, however, is that traditional law school classes relating to mental health and disability are not practically helpful to future attorneys and judges, and that course work does not give them the skills and knowledge (e.g., the ability to challenge expert witnesses) that are needed in their practices. Although we suspect that this last explanation best fits our data, we are not sure how it should influence law school educators and designers of curricula. If the goal of law school education is practical career preparation (as happens, for example, in medical school education), then our findings suggest that law schools (at least the institutions attended by our survey responders) have not done a satisfactory job of preparing future attorneys to deal with mental disability issues.¹⁸ If the goal of law school is to teach students to think and learn like lawyers, however, then our findings are not necessarily indicative of pedagogical failure. It is not our purpose here to do any more than raise this issue, appropriate

discussion of which would take us far beyond this article's modest scope. Nevertheless we hope our findings will lead legal educators to raise these types of questions as they consider course content and make educational recommendations to their students.

The attorneys and judges who responded to our surveys confirmed our views that mental disability issues are important to contemporary legal practice and that practitioners want and would benefit from postgraduate education about these issues. We feel that systematically gathered data about practicing attorneys' needs can provide valuable information for legal educators and can serve to correct the suspicions and anecdotes on which educational decisions are often based. Future studies using larger sample sizes and more sophisticated research methods should investigate the degree to which our surveys' findings are replicable and applicable to other regions. If future studies confirm our findings and the widespread predictions of greater psychiatric and psychological involvement in litigation, then attorneys and judges across the U.S. will need to increase their awareness of mental disability issues and improve their skill in handling them.

Notes

1. For a short historical review of courts' and the public's longstanding disdain for psychiatric testimony, see Phillip J. Resnick, *Perceptions of Psychiatric Testimony: A Historical Perspective on the Hysterical Invective*, 14 BULL. AM. ACAD. PSYCHIATRY & LAW 203 (1986). For additional examples, see Douglas Mossman, *Is Forensic Testimony Fundamentally Immoral?*, 17 INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY 347-368 (1994), Michael L. Perlin, *Unpacking the Myths: The Symbolism Mythology of Insanity Defense Jurisprudence*, 40 CASE W. RES. L. REV. 599 (1990), Michael L. Perlin, *Morality and Pretextuality, Psychiatry and Law: Of "Ordinary Common Sense," Heuristic Reasoning, and Cognitive Dissonance*, 19 BULL. AM. ACAD. PSYCHIATRY & LAW 131, 135 (1991).
2. See, e.g., *Machesney v. Bruni*, 905 F. Supp. 1122 (D.C. Cir. 1995) (psychiatric testimony was sufficient to establish psychological damages resulting from negligent diagnosis of HIV); *Jordan v. Gardner*, 986 F.2d 1521 (Calif. 1992) (experts in psychology and anthropology established potential for cross-gender body searches to

- induce emotional problems in women); *Shepherd v. American Broadcasting Companies*, 862 F. Supp. 486 (D.C. Cir. 1994) (racial slurs alleged to be cause of post-traumatic stress disorder). For examples of public press accounts, see Edward Felsenthal, *Courts Hear Mental-Health Experts in More Civil Cases*, WALL STREET JOURNAL (August 23, 1995), B1, B2; Frances A. McMorris, *Can Post-Traumatic Stress Arise From Office Battles?*, WALL STREET JOURNAL (February 2, 1996), B1, B10.
3. *Slants & Trends*, 13 MENTAL HEALTH L. REP. 65 (1995); *Chandler Exterminators, Inc. v. Morris*, 262 Ga. 257, 258-59 (1992) (neuropsychologist's opinion concerning brain damage allegedly caused by pesticide was "too speculative and incompetent as to medical causation"); *Martin v. Benson*, 481 S.E.2d 292 (N.C. 1997) (trial court erred in allowing neuropsychologist to testify that plaintiff had not suffered a closed head injury); *Kostelac v. Feldman's, Inc.*, 497 N.W.2d 853 (Iowa 1993) (affirming denial of workers' compensation benefits when the cause of an alleged work-induced suicide was diagnosed via "psychological autopsy"); *Shepherd*, (*supra* note 2) at 494 ("inexcusable sexist and racist jokes and insults" do not constitute an emotional trauma sufficient to support a claim of post-traumatic stress disorder).
 4. *Daubert v. Merrell Dow*, 113 S.Ct. 2786 (1993).
 5. Although the extent to which the *Daubert* opinion should apply to clinical opinion testimony is unclear (see Maureen O'Connor, Bruce D. Sales, Daniel W. Shuman, *Mental Health Professional Expertise in the Courtroom*, in BRUCE D. SALES & DANIEL W. SHUMAN (EDS.), LAW, MENTAL HEALTH, AND MENTAL DISORDER, 40, 50-55 (1996)), *Daubert* clearly offers a wider latitude for admitting science-based psychiatric and psychological testimony than was afforded under *Frye v. U.S.*, 293 F. 2013 (D.C. Cir. 1923). For discussions of this point, see Howard Zonana, *Daubert v. Merrell Dow Pharmaceuticals: A New Standard for Scientific Evidence in Courts?* 22 BULL. AM. ACAD. PSYCHIATRY & LAW 309 (1994). For a recent concurring viewpoint, see Ralph Slovenko, *The Daubert Sequelae*, 14 PSYCHIATRIC TIMES 22, 24 (1997) (*Daubert* has not kept "junk science" out of the courts).
 6. Michael L. Perlin, *Fatal Assumption: A Critical Evaluation of the Role of Counsel in Mental Disability Cases*, 16 LAW & HUM. BEHAV. 39 (1992); Michael L. Perlin & Robert L. Sadoff, *Ethical Issues in the Representation of Individuals in the Commitment Process*, 45 LAW & CONTEMP. PROBS. 161 (Summer 1982); Pizzi, *Competency to Stand Trial in Federal Courts: Conceptual and Constitutional Problems*, 45 U. CHI. L. REV. 21, 27 (1977) ("the key issue to the competency question is the defense attorney").

7. Norman G. Poythress, *Psychiatric Expertise in Civil Commitment: Training Attorneys to Cope with Expert Testimony*, 2 LAW & HUM. BEHAV. 1 (1978).
8. The definitive treatise is MICHAEL L. PERLIN, MENTAL DISABILITY LAW—CIVIL AND CRIMINAL (1989 with annual pocket update). Other fine recent texts include MICHAEL L. PERLIN, LAW AND MENTAL DISABILITY (1994) and BRUCE D. SALES & DANIEL W. SHUMAN (EDS.), LAW, MENTAL HEALTH, AND MENTAL DISORDER (1996). Although written for mental health professionals, we believe that BARBARA A. WEINER & ROBERT M. WETTSTEIN, LEGAL ISSUES IN MENTAL HEALTH CARE (1993) provides a useful introduction for law students.
9. Studies conducted in 1965 and 1975 by two Ann Arbor psychiatrists touched on the potential usefulness of human behavior or psychiatry courses in law school. In 1965, practicing lawyers said such courses would be helpful by a margin of 70% to 26%; a plurality (49%) of those surveyed in 1975 answered positively, and 21% answered negatively. See Melvin L. Selzer and Elissa P. Benedek, *Lawyers' Use of Psychiatry*, 122 AM. J. PSYCHIATRY 212 (1965) and Elissa P. Benedek and Melvin L. Selzer, *Lawyers' Use of Psychiatry: II*, 134 AM. J. PSYCHIATRY 435 (1977).
10. The experts were Michael L. Perlin (professor at New York Law School), John Parry (ABA Commission on Mental Disability and Law), and Thomas Hafemeister (Institute of Mental Disability and Law).
11. Douglas Mossman and Marshall B. Kapp, *Who Calls Us, and Why? Findings From a Survey on Attorneys' Use of Mental Health Experts* (manuscript in preparation).
12. Ohio Bar Association, THE OHIO LEGAL DIRECTORY. Dallas, TX: Legal Directories Publishing Company, 1995. This publication lists attorneys who belong to the Ohio Bar Association; we believe its Montgomery section includes over 95% of the attorneys who practice in the Dayton, Ohio, area.
13. Ohio Judicial Conference, THE OHIO JUDGE DIRECTORY. Columbus, OH: Ohio Judicial Conference, 1995.
14. We should mention that the cases judges hear are mainly a function of jurisdictions set up by local court structure. For example, each Ohio county has only one probate judge, whose office handles 100% of that county's estate cases.
15. The low rate of response may be typical of mailed surveys of attorneys and judges. See, e.g., Norman G. Poythress, *Psychological Issues in Criminal Proceedings: Judicial Preference Regarding*

Expert Testimony, 10 CRIMINAL JUSTICE & BEHAVIOR 175 (1983) (28% response rate in survey of Michigan circuit court judges).

16. Benedek & Selzer, *supra* note 9.
17. See, e.g., E.J. Stable et al., *Depression in Medical Outpatients: Underrecognition and Misdiagnosis*, 150 ARCH. INTERN. MED. 1083 (1990) (although depression is a commonly encountered problem in general medical patients, physicians recognized only 35.7% of depressed patients and falsely diagnosed depression in 18.5% of nondepressed patients); L.W. Badger et al., *Psychosocial Interest, Medical Interviews, and the Recognition of Depression*, ARCH. FAM. MED. 899 (1994) (only 48% of primary care physicians' interviews of depressed patients yielded a diagnosis of depression); J.M. Robbins et al., *Physician Characteristics and the Recognition of Depression and Anxiety in Primary Care*, 32 MEDICAL CARE 795 (1994) (only 44% of patients with high scores on a psychopathology scale were recognized by their physicians as psychiatrically distressed).
18. We should also point out that the surveys inquired about the usefulness of just one narrow aspect of law school education. It would be interesting to compare our findings concerning the modest helpfulness of law school course work related to mental disability issues with lawyers' and judges' estimates of the practical value of other aspects of their course work. It may be, for example, that practicing attorneys would rate most of their law school courses as "not at all helpful" or "somewhat helpful." Were this the case, it would point to a perceived inadequacy of law school education generally, rather than to a specific deficiency in preparing attorneys to handle mental disability issues.

