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FITNESS TO STAND TRIAL: AN
EXAMINATION OF DECISION-MAKING STRATEGIES
THROUGH THE USE OF HYPOTHETICAL CASE VIGNETTES

by
Stewart Glenn Plotnick
B.Sc. McGill University, 1985
M.A. University of Windsor, 1988

A Dissertation
Submitted to the Faculty of Graduate Studies
through the Department of Psychology
in Partial Fulfillment of the
Requirements for the Degree
of Doctor of Philosophy at the
University of Windsor
Windsor, Ontario, Canada
1992
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ABSTRACT

A series of written, hypothetical case vignettes was created to investigate the effect of bias in decisions regarding a criminal defendant's fitness to stand trial. The design of this study involved a manipulation of variables corresponding to the legal standard of fitness to stand trial: the presence of a mental disorder which compromises the defendant's ability to understand the nature and importance of the proceedings and/or communicate with defence counsel. Within this framework, three legally irrelevant variables were also manipulated. These variables involved the nature of the defendant's current crime, legal history, and previous psychiatric hospitalizations. Of the 1064 psychiatrists in the Province of Ontario who were solicited to participate in this mail-out study, 318 individuals returned a completed response form. The results indicate that psychiatrists rely on the legal criteria in rendering their fitness decisions. However, they appear to accord different levels of importance to the individual functional criteria of fitness and, at least under certain conditions, are influenced by biasing information in arriving at their opinion of fitness. The implications of these findings vis a vis the lives of mentally disordered criminal defendants and regarding the decision-making and evaluation processes are discussed.
ACKNOWLEDGEMENTS

I consider myself extremely fortunate to have had Dr. Jim Porter as my friend, clinical mentor, and research supervisor. I thank him for his generous support and encouragement, his thorough editing skills, and his overall warmth, kindness, and respect. He is a dear friend, and the "psychologist" I hope to be one day.

I would also like to thank the other members of my committee for their assistance. I am deeply grateful to Dr. Ron Frisch for his warmth, friendship, and support over the past few years and for his thoughtful contributions to this project. Having an office next to his offered me the opportunity to explore a number of "boundary" issues, and I have truly appreciated his open door policy. Dr. Michael Kral offered valuable clinical input to this study and Dr. Mary-Lou Dietz provided helpful suggestions regarding the 'larger' context of my findings. Finally, Dr. Robert Nicholson's thorough review of this study exemplified his expertise in the field and I am grateful for his helpful comments and recommendations.

I would also like to thank Prof. John Hawkins, an unofficial sixth committee member. His knowledge of methodological and statistical issues is enormous and superseded only by the time, energy, and willingness to share this wisdom with me. I wish to express special thanks to him for his abundant contributions to this project. I am also grateful to Liz Duffin with whom I never had to watch...
my tongue. Liz contributed above and beyond the call of duty, and I thank her for her consistently "endearing" support and comments.

My loving family has always stood by me throughout my academic and personal endeavours. My parents, Bernie and Betty Plotnick, fostered a deep commitment to higher education and I share this achievement with them. My sister, Marcy, was a constant source of encouragement and her wonderful sense of humour and empathic understanding for the rigours of academia were greatly appreciated. My sister, Maureen, and brother-in-law, Bernie, provided much needed weekend visits to Toronto, not to mention an abundance of food, clothing, and unlimited tennis matches. I am truly fortunate to have such a wonderful, devoted, and caring family and I love them all dearly.

I would also like to express my gratitude to my family in Windsor and Calgary. Betty and Bill Raymont graciously provided scrumptious dinners and much needed breaks from my work demands. They always seemed to know when I needed some time away from school and were sensitive to the ongoing battles and stresses of a graduate student. Darlene, Cheryl, and Greg made me feel right at home during my internship year in Calgary and through our recent return to the city. I thank them all for their warmth, hospitality, and understanding and I am proud to be a part of their family.

Finally, I would like to thank my wife, Sandra. We
have travelled through so much in the past six years — from awkwardly asking you out on our first date to getting married and having our first child. You supported me financially, emotionally, and psychologically through the most difficult periods of graduate school, never doubting my ability or resolve. I could not ask for a better partner in this world, I am glad you are mine. And so I am dedicating this dissertation to you, Sandra, and to our beautiful daughter, Meghan. You are two of the brightest lights in my life and I love you both more than words can say.
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CHAPTER I

INTRODUCTION

In ever increasing numbers, psychologists and psychiatrists are entering the judicial arena to offer their expertise on issues which bridge the legal and mental health professions. Legal matters such as guardianship, custody-access, insanity, and fitness to stand trial are but a few of the issues for which the courts have requested additional assistance (Grisso, 1986; Ziskin, 1981). The latter area represents perhaps the most "significant" (Stone, 1975, p.200) concern facing mental health professionals and is the subject of this investigation.

In both Canadian and American criminal law, there is a principle that criminal defendants must be present mentally and physically during their court proceedings. The former stipulation implies that the accused be capable of understanding the nature and importance of the proceedings and be able to rationally assist in his or her defence. When there is a question as to the person's mental health and its effects on his or her ability to participate in the criminal proceedings, the individual may be required to participate in an assessment of his or her "fitness to stand trial".
In this chapter, the background literature on this subject will be reviewed, including the historical bases and rationales for such legislation. This review will contain a minor focus on the substantive and procedural elements of both Canadian and American legislation regarding fitness to stand trial. The legal terminology of these two countries presents some semantic differences, as the term Competency to Stand trial is employed in the United States and Fitness to stand Trial is used in Canada. Nevertheless, there exists the same conceptual basis for the rules offered, thus affording a comparative review of research findings (Nicholson and Kugler, 1991; Rogers, Gillis, McMain, and Dickens, 1988). In this regard, this review will focus on the research contributions of the past 25 to 30 years, with an emphasis on the referral, evaluation, and decision-making procedures.

**History of Fitness to Stand Trial**

According to Schiffer (1978), the spirit of the fitness rule may be traced back to biblical teachings found in John (7:51) - "Doth our law judge any man, before it hear him, and know what he doeth." In this regard, the idea of being fit to stand trial, as a matter of moral theory and practice, is rooted in the age old concepts of fair play and fundamental justice. As legal doctrine, however, the idea of fitness first appeared in English criminal law around the ninth century (Lawrence, 1985). At that time, criminal
trial judges adopted the practice of excusing deaf mutes from trial, noting that to try an individual who could neither hear the charges nor offer a plea represented conduct that would "detract from the dignity, decorum and symbolic value of the proceedings and violate the protection (of the accused) against unfair and inhumane prosecution" (Lawrence, 1985, p.42). Typically, testimony of an "expert" examiner was not required in such matters. Rather, the court solicited corroborating evidence from family members regarding the congenital defects of the accused, thus rendering the individual excused from the proceedings (Lawrence, 1985).

It was not until the fourteenth century that the mental functioning of the defendant became a consideration in criminal proceedings. The earliest recorded deferral of a trial for an accused considered of "unsound mind" was in 1353 (Daniel and Resnick, 1987, p.303). At that time, reverence for the law made it unthinkable to prosecute a defendant unless he or she could render a plea to the charges. This was of particular significance since conviction resulted in the forfeiture of property to King Edward I. It, therefore, became a common practice for men of property to avoid conviction by refusing to plead (Daniel and Resnick, 1987). As such, when a person failed to offer a plea to the charges, the court's primary question became one of whether the accused was truly a "madman", a deaf
mute, or whether he or she was avoiding trial. Thus, the courts long ago recognized the need to distinguish malingering from genuine mental and organic disturbances, concerns which clearly remain in present day psychiatric assessments (Drob, Berger, and Weinstein, 1987).

Szasz (1989) noted that individuals suspected of being "mad" were typically regarded in terms of demonic possession or divine visitation, common explanatory concepts of the time. It was phrased as follows: "Is he mute by malice or by visitation of God" (Daniel and Resnick, 1987, p.303). In order to render an opinion on the matter, the courts adopted a procedure known as Peine Forte et Dure from which we derive the expression 'to press someone for an answer' (Daniel and Resnick, 1987, p.303). This custom involved slowly pressing the defendant to death under the increasing weight of heavy stones, thus 'encouraging' the accused to render a plea. In the absence of strong evidence, such as being deaf and mute from birth, it was unlikely that the court would find the defendant's incapacity to be due to a "visitation by God".

It was not until the middle of the eighteenth century that a defendant suffering from a mental disorder had any realistic chance of being found unfit to stand trial (Roesch and Golding, 1980). Hale, in 1736, suggested that a mentally ill person be found fit to proceed to trial unless he or she was "absolutely mad" (Hale, 1736, cited in Silten
and Tullis, 1977, p.1053). In many respects, Hale's writing foreshadowed much of the current law on the issue. For instance, as Roesch and Golding (1980) note, in using such terms as "phrenzy", Hale appeared to suggest that a wide variety of mental and physical impairments be given consideration in determining fitness. Moreover, the phrasing suggests that the manifestation of psychopathology be severe enough to truly compromise the accused's ability to understand or participate in the trial. Hale also suggested that it be the right of the state to hold a person indefinitely, while attempting to restore the individual to a state of fitness to proceed to trial. Hale wrote: (If) "it appear that he is mad, the judge, in his discretion, may discharge the jury of him, and remit him to gaol, to be tried after the recovery of his understanding" (Hale, 1736, cited in Silten and Tullis, 1977, p.1053). As will be noted in a review of the Canadian legal procedures, this same line of thinking continues to this day.

The decision of the courts to broaden the standard of unfitness (from excusing deaf mutes only to include those individuals judged 'insane') coincided with the legal requirement that jail physicians perform regular medical examinations on all prisoners. As part of the examination, the physician would investigate the accused's mental processes of perception, thinking, and memory (Lawrence, 1985). Unfortunately, in using the term "insanity", the
English courts began a long tradition of confusing criminal responsibility (that of being insane at the time of committing the illegal act) with fitness to stand trial. This distinction is one with which both legal and mental health experts have frequently and repeatedly struggled despite statutory efforts to clearly differentiate between the two considerations (Eizenstat, 1968; Geller and Lister, 1978; Halleck, 1980; McGarry, 1965; Miller and Germaine, 1987; Robey, 1965; Roesch and Golding, 1980; Slovenko, 1971; Stone, 1975).

For instance, early in the nineteenth century, the English courts revised their definition of fitness to reflect that the accused, at the time of his/her trial: (i) have the ability to understand the nature and purposes of the proceedings; and (ii) be able to rationally assist counsel in conducting the defence (Lawrence, 1985). According to Lawrence, this refinement in wording represented a significant departure from the earlier standard which simply equated being unfit to stand trial with insanity. Moreover, this revision allowed additional aspects of the defendant's mental status to be considered in the evaluation, making it legally possible for a defendant to be viewed as psychotic but fit or not psychotic but nevertheless unfit, to stand trial.

Criteria similar to those adopted in the English courts are also reflected in American criminal jurisdictions.
These guidelines were developed following a series of cases leading eventually to a set of criteria known as the Dusky Standard (Dusky v. United States, 1960). In its far reaching decisions, the U.S. Supreme court established the standard for determining Competency to Stand Trial. This Standard stipulates that the court must determine whether a defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and whether the defendant has a "rational as well as factual understanding of the proceedings against him" (in Dusky v. United States, 1960, p.402). In effect, the standard supplies the criteria for the court to use in assessing the competency of the defendant.

The Canadian counterpart to the Dusky Standard has yet to be written into the Canadian Criminal Code (CCC). Nonetheless, working guidelines have been supplied by the Law Reform Commission of Canada in its paper entitled "The Criminal Process and Mental Disorder" (LRCC, 1976). These guidelines indicate that a person is unfit to stand trial if, due to a mental disorder, the defendant:
(i) does not understand the nature and object of the proceedings against him, or
(ii) does not understand the personal import of the proceedings, or
(iii) is unable to communicate with counsel.
The procedural elements of fitness to stand trial, however, are clearly established within section 615 of the CCC (Gibson, 1988). The code allows that the trial judge may require a defendant to participate in a fitness assessment either before the commencement of the trial or at any time leading up to the pronouncement of a verdict or sentence. In so doing, the judge must have reason to believe that the accused is mentally ill, and the expressed purpose of the remand is to provide a period with which to "observe" the defendant. The code also stipulates that the remand be for a period "not exceeding thirty days," although a provision allows for detention of up to sixty days if this is considered necessary. In the event that the accused is found fit to stand trial after the evaluation, the defendant is returned to court for trial. If the defendant is found unfit to stand trial, however, the judge may order that the accused be "kept in custody until the pleasure of the Lieutenant Governor of the province is known" (Gibson, 1988).

The failure of the CCC to specify the legal criteria for fitness decisions has led to two interrelated difficulties: substantial confusion between the concepts of insanity and fitness, and a tendency to equate psychosis with a status of unfit to stand trial (Lindsay, 1977). Of particular concern is that these issues have lent themselves to inappropriate assessment practices (Roesch and Golding,
1980) and misguided fitness decisions (Slovenko, 1971). The former problem derives directly from the wording of the code, which states that both the remand and the ultimate fitness finding be "on account of insanity". Because of the use of the evocative term "insanity", the purpose of the remand often becomes unclear, and seems intimately connected to the issue of criminal responsibility. The two issues (fitness to stand trial and criminal responsibility) are legally and conceptually different, "resembling not only to different points in time but also to different aspects of a defendant's mental condition" (Johnson, Nicholson and Service, 1990, p.170). Specifically, a fitness hearing is held to determine if at the present time, the accused is satisfactorily able understand and assist in his criminal defence. A decision in this regard is a completely separate and distinct decision from one which is concerned with the accused's mental status at the time of the offence. This latter consideration falls under the rubric of criminal responsibility in which case the defendant may offer a plea of Not Guilty by Reason of Insanity (NGRI) indicating that the act was committed in a state of mind so influenced by a mental disorder as to render the individual blameless from a legal standpoint (Grisso, 1986). Lindsay (1977) asserts that, because of the tendency to confuse these two legal terms (insanity and fitness), it might be appropriate to simply excise the term insanity altogether from the code.
Despite the obvious differences between the two legal standards, studies have consistently revealed that mental health professionals, as well as judges and attorneys, frequently confuse questions of insanity with those of fitness (Eizenstat, 1968; Geller and Lister, 1978; Halleck, 1980; Miller and Germaine, 1987; Roesch and Golding, 1978; and Stone, 1975). The typical mistake is that of applying the McNaughten rule (which outlines the criteria by which the issue of criminal responsibility is debated) to issues of fitness. Slovenko (1971, p.3) illustrated this point quite clearly in quoting from the Brief of the Accused in Louisiana v. Edwards. Excerpts from the transcripts of that case read as follows:

Q. - Dr.--, are you familiar with the test a defendant in a criminal proceeding like this must pass before he can be adjudged to be able to stand trial?

A. - You mean the McNaughten Rule test? I am familiar with it, yes.

Q. - If I may read to you...the Code of Criminal Procedure...[which] says, 'mental capacity to proceed exists when as a result of mental disease or defect, a defendant presently lacks the capacity to', now this is the important phrase in my opinion, 'to understand the proceedings against him or to assist in his defence' Now is that the Mcnaughten Rule?

A. - That is my understanding, yes.
The second problem (equating psychosis with being unfit to stand trial) stems from the absence of operationally defined criteria to be used in assessing an individual's fitness to stand trial. Researchers such as Roesch and Golding (1980) have commented on clinicians' tendencies towards a finding of fitness in the absence of psychosis and a judgement of unfit to stand trial where such a mental disorder exists. This dichotomy ignores the fact that it is not the mere presence of mental illness which defines a recommendation that a defendant is unfit to stand trial. Rather, it is the "relationship between diagnosis and a determination of incompetency" which forms the crux of the decision (Roesch and Golding, 1980, p.72). Both of these points suggest that, in the absence of well defined criteria, clinicians' may stray well off the mark in formulating their fitness decisions.

**Rationale for the Fitness Rule**

From a legal perspective, various commentators have suggested that the fitness rule represents an extension of the common law ban on a trial 'in absentia' (e.g., Eizenstat, 1968; Lindsay, 1977; and Schiffer, 1978). This principle holds that the "mentally incompetent defendant, though physically present in the courtroom, is in reality afforded no opportunity to defend himself" (Foote, 1960, p.834). Hence, a primary rationale of this rule is to prevent serious miscarriages of justice in the event that
the defendant, owing to mental or psychological disorders, is unable to contribute to, and participate in, the search for truth at the trial. An additional purpose of the rule as noted in the LRCC recommendations (LRCC, 1976), is to ensure that the accused, if convicted, appreciates what is happening to him or her, the crime for which he or she is being punished and for what reasons. As Lindsay (1977) noted, this rule is intended to ensure that the reasons for punishment are clearly imprinted in the mind of the accused. Finally, an additional rationale is to ensure the dignity of the judicial process and the decorum of the courtroom (Lindsay, 1977). In many respects, this idea is related to the notion that it would be morally and ethically reprehensible (and, therefore, undignified) for the court to try an individual who is unfit to stand trial.

Although the rationale for the fitness rule appears easily understood, and the criteria well-written, neither have served to explicitly clarify the scope of the rule on fitness to stand trial. Instead, the appropriate application of the rule has been, and continues to be, decided through various legal cases which test the limits and boundaries of the criteria (Lindsay, 1977). In the original Dusky case in the U.S., for example, the lower court appeared to adopt a rather "narrow" view of fitness (Lindsay, 1977). The court judged that Dusky be considered fit to stand trial since he was able to relate the events
surrounding his offence (kidnapping and unlawful transportation across state lines). It was ruled that, since he was oriented to the time and place of the alleged events, he was thus able to assist counsel. However, it was considered irrelevant that the accused was suffering from a mental disorder which severely distorted his perception of what did, in fact, occur in relation to the alleged offence (Lindsay, 1977). On appeal, the Supreme Court of the United States reversed this decision, adopting a "rationality" test in determining the scope of the fitness rule (Lindsay, 1977). This test holds that, in order to find an accused fit to stand trial, the court must decide based on a qualitative assessment of the defendant's mental capacity to assist "rationally" in his defence and have a "rational" understanding of the proceedings taken against him. Hence, like Dusky, an individual suffering from a mental disorder which directly affects his or her accurate perception of reality (despite being oriented to and cognizant of the events in question) may be found unfit to stand trial. A similar definition of the scope of the fitness rule has yet to be written in to the Canadian Criminal Code although it appears that the wider, "rationality" test, is being adhered to (Lindsay, 1977).

**Fitness as a Construct**

The difficulty in definitively establishing the scope of the fitness rule, with easily applied criteria, suggests
that it may not be possible to reduce fitness to a set of concrete operations and observational terms. Rather, as Grisso (1986, p.14) suggests, fitness may best be regarded as a "set of hypothetical conditions" which are either present or absent in a given case based on the court's consideration of the circumstances and facts of each case. In this vein, no particular set of rules ever defines the hypothetical conditions for all cases (Drob et al., 1987). This notion is articulated by Roesch and Golding (1980) who advocated that fitness to stand trial be considered an "open-textured" construct (p.12). The concept would, therefore, have a considerable range of applicability, and would be defined and redefined on a case by case basis.

In light of the open-ended, abstract characterization of fitness, Grisso (1986) recommended that each assessment be conducted with a consideration of six particular components. These factors involve the functional, contextual, causal, interactive, judgmental and dispositional characteristics. Perhaps the two most fundamental objectives involve obtaining information regarding the accused's functional abilities within the specific legal context of the case. The criteria noted above (e.g., LRCC recommendations) offer the basic parameters for functional abilities that are of concern to the law in assessing an individual's fitness to stand trial. In a broad sense, the examiner must evaluate the defendant's
understanding and ability to participate in his criminal proceedings. But as Grisso points out, the real task is to determine the "specific functional abilities concepts that might be relevant to this domain" (Grisso, 1986, p.15). In this regard, a number of researchers have developed lists of functional abilities concepts which, on theoretical grounds, appear to be relevant to the specific context of a fitness determination (e.g., Bukatamen, Foy, and de Grazia, 1971; Robey, 1965). Typical questions focus on the accused's understanding of the role of key figures (e.g., the judge and jury), capacity to disclose information to counsel, and ability to appraise legal defences.

In addition to the functional and contextual characteristics, Grisso advocated consideration of a causal element in an evaluation of fitness. Specifically, he recommended that the clinician report not just a diagnostic formulation pertaining to a psychiatric disorder (if applicable) but that the examiner note the causal relationship between the disorder and deficits in legally relevant functional abilities. The intent of this determination is to aid the court in formulating causal explanations for the observed functional deficits. As Nicholson, Briggs, and Robertson (1988) pointed out, the psychiatric and psychological conditions are particularly relevant to the fitness construct because they influence a defendant in such a way as to explain the observed
functional inabilities. According to Grisso, there are a number of psychological factors to consider in addressing causal considerations including general intelligence, memory, contact with reality, motivation, reasoning or problem solving, and emotional control. Current fitness instruments include items designed to conceptualize the relationship between psychological constructs and the legally relevant variables.

The fourth characteristic is an interactive one. Grisso recommended that the evaluator assess the degree of incongruence between a defendant's functional abilities and the anticipated demands of the trial situation. This reflects a concern for the defendant's understanding and ability to participate in the trial given a host of relevant factors: the complexity of the case, the legal defences available to the accused, the need to have the defendant testify, and the numbers and types of witnesses and experts who may take the stand. Since this information often requires the assistance of a lawyer, some commentators (e.g. Schreiber, Roesch, and Golding, 1987) have advocated the use of interdisciplinary assessment teams involving mental health professionals and attorneys.

Grisso's fifth and sixth considerations involve a judgement of the person-context incongruence in light of the consequences of a finding of fit or unfit to stand trial. The fifth consideration relates to the degree of
incongruence which must be present in order to warrant a finding of incompetency. The Dusky Standard states that the "test must be whether he (sic) has 'sufficient' present ability to consult with his lawyer with a 'reasonable' degree..."(from Shapiro, 1984), thus advocating a determination of the extent of the deficits. As Grisso noted, this task is a highly discretionary one. The sixth consideration relates to the consequences which will or may accrue to the individual and society. Grisso suggested that some consideration be given to whether a finding of fit or unfit to stand trial would reflect a fair or just outcome. At issue is the difficult task of weighing the potential for the deprivation of freedom and liberty often incurred by the unfit defendant and the possible risks to society which be associated with the decision.

This latter concern represents a moral and social judgement. Grisso was clear that the evaluator not render an opinion in such a way as to usurp the decision-making responsibility of the magistrate. Nevertheless, reports of clinical practice suggest that practitioners frequently weigh these concerns with this intention in mind. Lindsay, (1977, p.334) for example, described one psychiatrist who always applied the "narrow" test of the fitness rule regardless of an accused's lack of "rationality". The psychiatrist attributed this tendency to an apparent procedural unfairness in Canadian law -- that individuals
found unfit to stand trial often were incarcerated for considerably longer periods than they would have been if they had been convicted of the charges against them.

It is of note that such practices are not supported in the literature. Many authorities on the subject (e.g., Grisso, 1986; Roesch and Golding, 1980) advocate that descriptive (as opposed to conclusory) reports be submitted to the court and that conclusions be drawn only in such a way as to assist the court in its decision-making role. Nevertheless, reports such as Lindsay's suggest that the tendency to offer conclusory reports may represent an important component in actual practice, and that knowledge of the outcome to the defendant of a fitness decision may be an important consideration of the decision-making tendencies of forensic clinicians.

Fitness and the Evaluation Process

As indicated in the guidelines set forth in the Canadian Criminal Code (Gibson, 1988), a criminal defendant may be remanded to a psychiatric facility for an assessment of the individual's fitness to proceed to trial. From a legal perspective, a recommendation regarding the accused's fitness must be rendered by a duly qualified medical practitioner. On occasion, some psychiatric facilities have reported the use of multidisciplinary teams in the course of the evaluation and decision-making task (Webster et al., 1982). Despite this team approach, the final decision
remains with the psychiatrist having the legal mandate to render an opinion to the court.

In most Canadian jurisdictions, a thirty day remand is usually pursued and decisions as to the fitness of the defendant are most often reached within that time frame. The code permits lengthier in-patient hospitalizations when needed, up to sixty days. There are some noted exceptions to the 30 day inpatient hospitalization, as facilities begin to recognize the application of briefer assessments, sometimes conducted on an outpatient basis. For example, the Brief Assessment Unit (BAU) of the Metropolitan Toronto Forensic Services (METFORS) routinely uses a group-based, interdisciplinary assessment intended to quickly screen out defendants whose fitness is clear and for whom a 30 day incarceration appears unwarranted (Webster et al., 1982). Such assessments are conducted within a 24 hour period.

The procedures used in a fitness assessment are not uniform, varying from one facility to another. The most common (30 day) psychiatric remand involves a multifaceted approach, including any or all of the following procedures: a medical examination (including laboratory tests such as a neurological exam, blood work), mental status examination, psychiatric history review, interview regarding the defendant's understanding of his or her current legal situation, interview by psychologists, the completion of a battery of intelligence and personality tests, interviews by
nursing staff and social workers, and finally a compilation of ward reports concerning the patient's conduct during his or her stay on the unit (Holmstrup, Fitch and Keilitz, 1981).

Mental health professionals who conduct fitness evaluations have been strongly criticized for relying too heavily on traditional diagnostic concepts and tools in their assessment procedures. For example, Nicholson et al. (1988) state that this tendency has been characterized as an "irrelevant, invalid and incomprehensible" practice (p.383). Expert testimony, relying on these traditional methods, often equates fitness to stand trial with the absence of symptoms of a major psychiatric disturbance (Roesch and Golding, 1980); the assessment of fitness has infrequently been considered as an "open-textured" construct, one which provides for the circumstances of the individual's mental disorder in conjunction with the realities of his/her legal situation; and too little attention (if any) has been paid to functional legal criteria, such as the individual's ability to understand the proceedings and aid in his or her defence. To overcome these problems, investigators have developed instruments specifically designed to translate the legal criteria into meaningful and relevant psychological and behavioral observations (Nicholson et al., 1988). These instruments, in combination with more traditional tools, have afforded
the opportunity to investigate the correlates of the fitness construct (Nicholson and Kugler, 1991).

The advent of specialized fitness instruments began with checklists of criteria published by Robey (1965) and Bukatamen et al. (1971). These lists include a variety of "functional abilities concepts" (Robey, 1965) which the assessor was to address in the course of the evaluation. By the early 1970's, two additional instruments were introduced by the Laboratory of Community Psychiatry of Harvard Medical School. One of these tools is the Competency to Stand Trial Assessment Instrument (CAI), the purpose of which was to "standardize, objectify, and quantify the relevant criteria for competency to stand trial" (Laboratory of Community Psychiatry, 1973, p.99). The primary focus was on legal issues to the exclusion of mental status items. In this regard, the CAI describes thirteen functions believed to be related to the accused's ability to participate in a self protective fashion through the course of the trial.

The second instrument is the Competency Screening Test (CST), authored by Lipsitt, LeLos, and McGarry (1971). This test was designed as an initial screening measure to be used by paraprofessionals. It was hoped that administering the CST, along with a brief psychiatric interview, would serve to screen out defendants who were clearly fit to stand trial, thus avoiding a lengthy hospitalization. In this regard, this test which contains 22 items in the form of
incomplete sentence blanks, may be viewed as a psychometric
definition of a threshold for recommending or ruling out a
lengthier examination (Grisso, 1986).

It was not until about a decade later that additional
instruments were published. Of note to forensic
practitioners working in Canada was the development of the
Fitness Interview Test (FIT). Developed by Roesch, Webster,
and Eaves (1984), the FIT was created in an effort to
improve on the CAI by including mental status variables in
conjunction with relevant legal criteria. To this point, it
remains the only standardized Canadian fitness instrument
available. Shortly after the introduction of this tool, the
Interdisciplinary Fitness Interview (IFI), developed by
Golding, Roesch, and Schreiber (1984), was also introduced.
The IFI, designed for use within an American legal context,
similarly offers a balance of legal and mental status items.
Unlike the FIT, however, the stated intention of the IFI was
to cover these two domains from an "explicitly functional
perspective" (Golding et al., 1984, p.324). Hence, the IFI
noted the importance of psychopathological items as they
relate to the defendant's potential to function within the
legal arena.

In many respects, the FIT and the IFI are strikingly
similar. Both offer the possibility of joint evaluation
interviews involving lawyers and clinicians, and each was
designed as a semi-structured interview with anchored rating
scales. There are also provisions for assessors to assign ratings indicating the relative importance of the various items on their decision regarding the fitness of the patient being assessed. In this regard, the FIT and IFI have provided one avenue with which to investigate the decision making strategies of mental health professionals (Golding et al., 1984; Roesch et al., 1984).

Another test of interest, the Georgia Court Competency Test (GCCT), was developed by Wildman and colleagues at the Central State Hospital in Georgia (Wildman, Batchelor, Thompson, Nelson, Moore, Patterson, and de Laosa, 1978). Although the GCCT was not intended for widespread use, it has come to be used by various clinicians in different locales (Grisso, 1986), perhaps because of its relative speed of administration (approximately 10 minutes). A revised form of the GCCT has been used extensively in research aimed at determining the prediction of competency criteria (Nicholson, Robertson, Johnson, and Jensen, 1988), and towards examining the theoretical domains of the fitness construct (Bagby, Nicholson, Rogers, and Nussbaum, in press).

A review of the psychometric properties of the tests described above is offered by Grisso (1986, chapter 5) and is beyond the scope of this paper.
The Decision-Making Process

The IFI and the FIT have provided clear opportunities to investigate the decision-making tendencies of forensic clinicians. Both of these instruments ask the assessor to provide ratings of the relative importance of each item towards the overall fitness judgement. Taken together, the studies by Golding et al. (1984) and Roesch et al. (1984) suggest that both attorneys and mental health workers (psychiatrists, social workers, psychiatric nurses, and psychologists) rely on legal as well as psychopathological items in their decision-making strategies. As well, the researchers found that the professional groups agreed on the overall incapacity of the defendants, although they disagreed about the relative importance of various individual items which loaded into their respective decisions. In some respects, these findings highlight a "discretionary" decision-making process (Menzies et al., 1982, p.122) in which two individuals may arrive at the same decision for different reasons. From a statistical standpoint, however, this finding is not altogether clear. Specifically, the authors cited above employed statistical analyses designed to assess the importance of the predictor variables on the final judgement of fitness. In this case, two predictor variables may be highly correlated with one another, yet differentially correlated with the criterion variable. As such, the relative importance of an individual
predictor variable may be misconstrued. This could possibly lead to an erroneous conclusion regarding the items which each of the professions considered most influential in formulating their decision.

The study by Roesch et al. (1984) raised another interesting issue. In this study, the researchers had evaluators from four professions rate 8 videotapes of fitness evaluates using the 28 items on the FIT. The preselected videotapes involved defendants whose status had been predetermined to fall into four distinct categories: Fit, Questionably Fit, Unfit and Questionably Unfit. When the mean ratings of incapacity across the 4 categories of fitness (and for all raters combined) were determined, a general pattern emerged. On virtually every item, the ratings accorded to the defendants depicted as Unfit had the highest degree of incapacity ratings, while those attributed to the defendants depicted as fit had the lowest ratings. The ratings offered for the two questionable cases fell in the middle range (with some overlap of individual item ratings). As expected, the individuals depicted as Questionably Unfit received generally higher item ratings (i.e., reflecting a lesser degree of fitness) than those depicted as Questionably Fit. The authors concluded: "It may well be that raters first made a global judgement about the fitness of a defendant and then made specific ratings consistent with this judgement" (Roesch et al., 1984, p.24).
This possibility is consistent with earlier findings presented by Roesch (1979). He noted the speed with which fitness decisions had been made (within the first 2 or 3 days of admission) and the differential mental status reports offered between fit and unfit defendants. Roesch (1979) suggested that the decision-making process of the psychiatrist may be to first to judge a defendant's fitness and later to attach a diagnostic label which he or she considers consistent with this judgement.

Judicial Decisions and the Outcome for Criminal Defendants found Unfit to Stand Trial

What, if anything, are the courts doing with the assistance they receive in the form of fitness evaluations conducted by clinicians? Research suggests that, by and large, judges tend to agree with the opinions and dispositional recommendations of the mental health experts. In their survey of judges, for example, Roesch and Golding (1978) found that 35% of the respondents indicated that they never disagreed with the recommendations they received while the remaining 65% indicated that they rarely or only occasionally disagreed. Further, 59% of judges reported that they typically did not hold a formal hearing on the issue, choosing instead to rely on the decisions of the mental health professional. And, where the psychiatric recommendation was that the defendant was unfit to proceed, nearly half of the judges indicated that they automatically
committed the accused to a psychiatric facility. Similarly, Webster et al. (1982) noted an agreement rate of 76% between the psychiatric recommendation and the court's eventual judicial disposition. A follow up study by the same authors recorded a slightly higher figure of 79%. Although it is not the responsibility of clinicians to be the legal decision-makers, clearly the court's reliance on their decisions suggests the critical role which they do, in fact, play. The net effect, then, is that the evaluation which the mental health professional makes will have a considerable impact on the life of the defendant.

This is particularly true when considering the outcome for criminal defendants found unfit to stand trial. Consider, for instance, a recent report by Phillips, Landau, and Osborne (1987) regarding the length of incarceration for unfit defendants in Ontario. They found that, on average, the length of confinement for defendants considered unfit and held on a Lieutenant Governor's warrant was 86.9 months (greater than seven years). Although some variability was noted, ranging as low as one month, there also appeared to be some outstandingly long incarcerations, up to 44 years in duration. Similarly, in an earlier study, Jobson (1969) reported on three individuals charged with vagrancy in Nova Scotia who were found unfit to stand trial. Despite a maximum sentence of six months under the criminal code if found guilty as charged, these three persons (who were never
tried, much less convicted) remained hospitalized for periods of five, 22, and 33 years respectively.

In light of such lengthy incarcerations, the Supreme Court of Canada recently denounced the existing legislation allowing for an indefinite confinement on a Lieutenant Governor's Warrant. In a 1991 ruling, the Supreme Court of Canada held that the existing procedures were in violation of the Charter of Rights and Freedoms of the Constitution of Canada. The Supreme Court proposed amendments including capping provisions for the maximum length of a remand for a finding of unfitness based on the type of crime committed. Nevertheless, findings such as the ones reviewed above have led some commentators (e.g., Stone, 1988) to comment on the abuses of the fitness rule while others (e.g., Szasz, 1989) have referred to this as evidence of a psycholegal system bent on "psychiatric justice". Considering the impact that these opinions have on the courts, and in turn on the lives of criminal defendants, understanding (and possibly refining) the decision-making processes of forensic practitioners is imperative.

Overview of Research Findings of Fit and Unfit Defendants

The issue of fitness to stand trial involves various interdependent factors related to procedural and substantive elements of both the legal and mental health systems. Given this complex intertwining of factors, it is not surprising to find that the subject has been investigated from several
different (yet interrelated) standpoints. In the text to follow, a review of these research findings will be presented. Emphasis will be placed on the referral process and characteristics of defendants considered fit and unfit to stand trial.

Fitness and the Referral Process

Questions regarding a defendant's fitness to proceed to trial may be raised by the accused (or the accused's counsel), the prosecution, or the judge (LRCC, 1976). If such concerns are expressed by the defence or prosecution, it is left to the judge's discretion as to whether an inquiry is to be held on the matter. Statistics from North American jurisdictions suggest that such fitness hearings are frequently held (Gutheil and Applebaum, 1982; Stone, 1975; Webster et al., 1982). Stone, for example, described the issue as "the most significant mental health inquiry pursued in the system of criminal law" (Stone, 1975, p.200). It's significance may be gauged by the number of defendants who are referred for fitness evaluations. Estimates of the annual number of referrals in the U.S. suggest that as many as 25,000 to 36,000 individuals are referred for this purpose (Steadman, Monahan, Hartstone, Davis, and Robbins, 1982). In the Canadian milieu, Webster, et al. (1982) report that as many as 5,000 fitness assessments are conducted annually, noting that this figure represents a conservative estimate. This contention is supported by
Webster, Butler, Menzies, and Turner (1980) who found that 248 fitness evaluations were conducted in a one month study period across six Canadian cities.

In light of these lofty figures, questions regarding the base rates for findings of unfitness to proceed to trial have been raised. That is, what percentage of people, for whom the issue of fitness has been queried, are ultimately found unfit to stand trial? A recent review by Nicholson and Kugler (1991) of 30 studies conducted in the U.S. and Canada found that an average of just over 30% of defendants whose fitness is assessed are found unfit to stand trial. It is of note that there is a considerable amount of variability in the base rates reported. Roesch and Golding (1980), in their review of 10 U.S. studies, found that recommendations of unfit to stand trial ranged from as low as 4% (Bendt, Balcanoff, and Tragellis, 1973) to as high as 77% (Gold, 1973). Studies conducted in various Canadian jurisdictions also evidence variability in their findings, from 7% in Saskatchewan (Kunjukrishnan, 1979), 20% in British Columbia (Roesch, 1981), 22% in Nova Scotia (Jobson, 1969), to 35% in Alberta (Arboleda-Florez, Gupta, and Alcock, 1975). This high degree of variability likely reflects differences in mental health administration and procedures across the multitude of jurisdictions sampled (Nicholson and Kugler, 1991).
Notwithstanding this variability, it remains clear that approximately 70% of defendants referred for a fitness evaluation are found fit to stand trial. This considerable difference between the referral rates and the base rates for findings of unfitness have led various legal and mental health scholars to suggest that the application of the fitness rule has gone far afield from it's initial intention of protecting the defendant from an unfair trial (Ziskin, 1980). Lindsay (1977), for instance, suggests that the issue of fitness is frequently raised by the defence or prosecution as a strategic tactic or manoeuvre. Inherent in this strategy is the fact that, in most jurisdictions, raising the issue of fitness results in a period of psychiatric incarceration (typically of 30 days).

Commentators have suggested that the prosecution may have a host of reasons for pursuing this recourse: it may serve as a means of denying bail (Slovenko, 1971), forcing long-term detention (Stone, 1975), stalling the proceedings (Reich and Wells, 1985), removing public pressure from the prosecuting attorney in well publicized but otherwise legally tenuous cases (Mathews, 1970), avoiding a trial on the issue of criminal responsibility (Mathews, 1970), short-circuiting the more complicated civil commitment procedures (Eizenstat, 1968), or dealing with "undesirables" for whom there appears to be no other recourse under the law (Hess and Thomas, 1963).
Defence attorneys may raise the issue of fitness to avoid capital punishment or a lengthy sentence, to delay the trial, or to lay the groundwork for arguing for a reduction or change in either the charge or the sentence (Chernoff and Schaffer, 1972; Cooke, Johnston, and Pogany, 1973; Schiffer, 1978; Roesch and Golding, 1980). As well, the defence may recommend a fitness assessment in anticipation of laying the groundwork for a defence of not guilty by reason of insanity (Rogers and Mitchell, 1991).

**Characteristics of Criminal Defendants Found Fit and Unfit to Stand Trial**

A primary focus in the research literature on fitness to stand trial has involved the differentiation of fit defendants from their unfit counterparts. The characteristics examined have included demographic, clinical, and psycholegal variables. In a recent and well integrated paper, Nicholson and Kugler (1991) quantitatively reviewed 30 studies comparing these two groups. The authors' stated intention was to identify the variables associated with judgements about fitness. Since their review thoroughly collated the available data on the subject, their paper will be used extensively in the following discussion of defendant characteristics.

**Background Characteristics**

The studies reviewed by Nicholson and Kugler reveal a pattern of the demographic and clinical characteristics of
defendants referred for fitness evaluations. Almost 90% are male, less than 40% are from minority groups, and the average number of years of education is slightly less than 10 years. More than half had never been married and about 68% did not have steady employment. As for criminal offence and history, Nicholson and Kugler report that more than half of the current charges related to crimes of violence and about 50% of the defendants had prior contacts with the criminal justice system. As well, nearly 40% of the defendants had previous psychiatric hospitalizations. These referrals typically scored in the low average range of intellectual functioning, and almost 40 percent received a diagnosis indicating the presence of a psychotic disorder. Finally, a diagnosis of mental retardation was infrequent, occurring in slightly more than 6% of the cases.

Although these demographics describe the entire fitness-referral population (fit and unfit defendants), they are similar to those of the unfit defendants noted by previous researchers (e.g. Lamb, 1987; Steadman, 1979). The picture of a defendant who is unfit to stand trial presented in these studies was of "an individual with few social skills or economic resources, extreme psychiatric morbidity, and a propensity for committing crimes of violence" (Nicholson and Kugler, 1991, p.356).

Nicholson and Kugler were particularly concerned with quantifying the relationship between the defendant's fitness
status (fit versus unfit) and the background characteristics as researched in the thirty studies they collated. Their findings may be broken down into three categories involving demographic, legal status and psychiatric/psychological correlates.

Of the six demographic characteristics studied, four exhibited small but statistically significant correlations with fitness decisions. The pattern suggests that older defendants, women, members of minority groups and the unmarried were more likely to be found unfit to stand trial. In contrast, decisions about fitness were not found to be related to educational resources or employment status. The magnitude of the correlations (significant or otherwise) was not particularly strong, ranging from -.02 to .09. Moreover, the variance in fitness status accounted for by these individual variables was less than 1%. Nicholson and Kugler also analyzed the demographic data using Cohen's h statistic (Cohen, 1977), noting findings consistent with those obtained from the correlational analyses reported above.

These findings led Nicholson and Kugler to conclude that the social and economic resources of the accused appear largely irrelevant to fitness decisions. In fact, the authors indicate that significant correlations between these variables and fitness status are not to be expected, since demographic characteristics are irrelevant to the legal
criteria of fitness. In some of the individual studies reviewed, however, researchers reported considerably higher correlations between sociodemographic variables and decisions regarding fitness status. For instance, Johnson et al. (1990) reported a significant correlation between race and fitness decisions \( (r = -0.20) \), such that male defendants judged unfit were more likely to be of Afro-American descent. The magnitude of this correlation dropped substantially (and was not significant) when psycholegal ability and diagnosis were controlled for. Hence, differences in fitness decisions which were correlated with race and gender, and seemingly evidence of bias, were apparently related to relevant clinical features. Similarly, Rogers et al. (1988) found that they could best predict fitness decisions given information about the defendant's gender, race, and age -- correctly classifying subjects 71\% of the time. Specifically, defendants judged to be questionably fit/unfit were significantly more likely to be older and non-white, and differences based on gender approached significance with females appearing more likely to be found unfit. This finding led the authors to seriously question possible biases in the evaluation process. However, the discriminant function which they derived accounted for only 25\% of the variance in fitness judgements, suggesting that the contributions of these variables to the overall decision were, in fact, quite
minimal. Moreover, Rogers and Mitchell (1991) in a recent review, suggest that these findings may alternatively reflect biases "in referral patterns from judges and lawyers" or "true' differences in fitness on the basis of gender, age, and nationality" (p. 96).

In explaining the modest correlations between demographic variables and fitness decisions, Nicholson and Kugler suggested that the observed relationships may be due to differences across groups in other factors such as psychiatric status or legal ability. They recommended the need to control for psychiatric and legal variables in estimating the relationship between demographic variables and competency decisions. The results of a recent study suggest that, indeed, these demographic variables (individually or as a set) are not related to fitness judgements after psycholegal variables are controlled for Nicholson and Johnson, 1991).

In addition to the sociodemographic variables discussed above, Nicholson and Kugler presented findings about legal and psychiatric history variables. They found the absence of previous legal involvements ($r=.17$) and the presence of prior psychiatric hospitalizations ($r=.26$) to be significantly correlated with a status of unfit to stand trial. Current offence (violent or non-violent) was not found to be correlated with fitness. The authors noted that an analysis of the data using Cohen's $h$ statistic (Cohen,
1977) revealed the same pattern of results. A larger proportion of those without a prior legal involvement and those with a history of previous psychiatric hospitalizations were found unfit to stand trial. However, the probability of committing a violent offence and being found unfit did not differ significantly from that of committing a nonviolent crime and being found unfit to stand trial. Finally, the authors assessed the relationship between fitness status and current offence according to the facility to which the defendant was referred (e.g., an inpatient or outpatient setting). These analyses revealed that there was a weak, but nonetheless significant correlation between the defendant's current charge (violent offence) and a finding of unfitness in inpatient settings only ($r = .08$).

These results lend themselves to interesting conclusions and further speculation regarding both the referral and decision-making processes. Although acknowledging that the relationship between type of offence and fitness status in inpatient facilities suggests further investigation, the authors suggested that the current crime likely has a stronger impact on the decision to refer than it does on the ultimate decision regarding fitness. The authors noted that their findings seem consistent with an argument advanced by Melton, Petrila, Poythress, and Slobogin (1987), that the overall group of fitness referrals
is one in which there is a higher prevalence of having committed more serious crimes. Previous research findings (e.g., Steadman and Braff, 1975; Cooke, Johnston, and Pogany, 1973) have also revealed disproportionately high referrals for more serious crimes. Collectively, these findings support the notion that strategic ploys may be at the root of fitness referrals. As noted earlier, there are a number of possible motives for making this referral, such as avoiding a jury trial, or laying the groundwork for a plea of not guilty by reason of insanity, among others. The findings involving previous legal charges and prior psychiatric hospitalizations also lend themselves to interesting possibilities. Nicholson and Kugler suggested that previous experience with the judicial system may increase a defendant's competence to proceed to trial, thus justifying the obtained results. However, given that neither previous legal charges nor psychiatric incarcerations are dispositive of being considered unfit to stand trial according to the legal criteria, the possibility of a bias in the decision-making process must be considered as well.

In terms of the relationship between specific psychiatric symptoms and fitness status, Nicholson and Kugler reported significant correlations for 6 of 8 symptoms studied: disorientation, delusions, hallucinations, impaired memory and disturbed behaviour. Defendants found unfit to
stand trial tended to exhibit considerably more severe psychopathology than their fit counterparts, with symptoms reflective of psychotic disorders. According to the authors, these symptoms indicate the presence of "cognitive dysfunction and behavioral dyscontrol" (Nicholson and Kugler, 1991, p.360). Further, they noted that this finding is to be expected given that a severe psychiatric impairment offers a "factual" (p.364) basis for the defendant's functional inability as dictated by the criteria for fitness.

Nicholson and Kugler also reported a statistically significant correlation between a diagnosis involving a psychotic disorder and a judgement of unfit to stand trial \((r=.45)\). As well, the authors report that, on average, one of every two psychotic defendants was judged unfit to stand trial in contrast to one in 10 nonpsychotic defendants. Nicholson and Kugler note, therefore, that their findings do not suggest that the clinicians are guilty of simply equating the presence of psychosis with a status of unfit to stand trial, since fully one half of the psychotic defendants in this large sample were found fit to stand trial.

In comparison to the presence of a psychotic disorder, the correlation between fitness status and mental retardation was quite weak and non-significant \((r=.04)\). As a group, mentally retarded individuals are referred for
fitness evaluations only rarely, somewhere in the range of 1% (Webster et al., 1982) to 5% (Reich et al., 1985) of the time. Williams and Spruill (1987) noted that the actual percentage of these individuals who are subsequently found unfit to proceed is unclear. Nicholson and Kugler report that for every three mentally retarded defendants found unfit, approximately 2.5 are found fit to stand trial. This proportional difference was not statistically significant. In accounting for this result, the authors noted that too few of the studies surveyed offered information about classifications of mental retardation. They state that it is possible that a relationship exists between retardation and fitness and that future research efforts may seek to compare defendants in the severe and moderate retardation categories with those defendants who are mildly or nonretarded. Williams and Spruill (1987), however, suggested that mentally retarded defendants tend to pass through the legal system in a fashion different than their non-retarded counterparts, perhaps explaining the weak association between this diagnostic category and fitness status.

Nicholson and Kugler also investigated the relationship between psychological test performance and fitness status. In terms of the more traditional test instruments used, they found that defendants who are unfit to stand trial scored significantly lower on standard IQ tests than did fit
defendants \((r=-.16)\). Significant differences were also found on four scales of the Minnesota Multiphasic Personality Inventory. Defendants found unfit tended to score higher on scales F, 6 and 8, scales which reflect severe psychological disturbances. A significant (positive) correlation was also noted on scale 5, a finding which the authors acknowledged is difficult to explain. Overall, however, the significant correlations were quite small (less than .08), leading Nicholson and Kugler to suggest that the MMPI is likely of little use for fitness evaluations.

Finally, Nicholson and Kugler reviewed findings from studies employing various fitness instruments. They found that the Competency Screening Test and Georgia Court Competency Test (Mississippi State Hospital revision) demonstrated significant negative correlations with fitness judgements \((CST, r=-.37; GCCT-MSH r=-.42)\). Both of these tools employ cutoff scores for fitness decisions, and the results indicate that defendants who scored poorly (below the cutoff) were more likely to be found unfit to stand trial. A similar result was obtained for the Competency to Stand Trial Assessment Instrument \((r=-.52)\). Although this test allows for some quantification, it does not provide cutoff values. Nevertheless, poor scores were significantly associated with a finding of unfit to stand trial. Finally, Nicholson and Kugler reported a negative correlation \((r=-.42)\) between performance on the Interdisciplinary Fitness
Interview test and fitness status. Since this coefficient
is reported from only one study, (Shreiber, Golding, and
Roesch, 1987) they were unable to combine findings. They
noted, however, that the correlation coefficient is of the
same approximate magnitude as comparable instruments. They
also noted that, collectively, the forensic assessment
instruments appear to demonstrate correlations of
considerably higher magnitude than do traditional assessment
tools.

The Present Study

The quantitative review of comparative research
conducted by Nicholson and Kugler (1991) indicated a number
of variables which were correlated with decisions about
fitness to stand trial. For instance, they reported
significant correlations between a finding of unfit to stand
trial and a defendant's (poor) performance on tests
assessing legally relevant functional abilities, the
presence of a psychotic diagnosis, and/or symptoms
indicative of serious psychopathology. Given that these
variables are consistent with the legal standard of fitness,
the authors concluded that the decisions appear to be
formulated in manner consistent with the legal criteria.

Nicholson and Kugler (1991) also reported reliable and
significant correlations between some sociodemographic,
legal and psychiatric history variables and decisions of
unfit to stand trial. For example, the researchers reported
that the presence of previous psychiatric hospitalizations and an absence of prior arrests were both positively correlated with a status of unfit to stand trial. In addition, for defendants in in-patient facilities, they found a positive correlation between a status of unfit to stand trial and a current charge related to a violent crime. Hence, the findings suggest that these three variables may play a role in decisions about fitness to stand trial. If this is the case, these variables reflect potential biases in the decision-making task, since none of them are dispositive of unfitness according to the legal criteria (Nicholson and Kugler, 1991).

Nicholson and Kugler's (1991) correlational study points to, but did not directly address, the possibility of causal relationships existing between the biasing variables and fitness decisions. For example, the finding that defendants committing a violent crime are more likely to be found unfit to stand trial (as compared to defendants committing a non-violent crime) suggests a number of interpretive possibilities as follows:

(1) individuals committing violent crimes are, in fact, more frequently unfit to stand trial than those committing non-violent crimes;

(2) there are moderating variables which may explain the observed correlations (e.g., people who commit violent crimes are more likely to be found unfit because they are,
in fact, deficient in the areas pertaining to the psycholegal abilities defining fitness); or

(3) there really are no differences between people who commit violent crimes and those who commit nonviolent crimes with respect to psycholegal abilities and/or psychiatric impairments, rather the presence of a violent crime acts to bias the decision maker. Hence, while their findings suggest relationships between certain variables and judgements of unfitness, it is difficult to ascertain the most appropriate scenario which best explains the correlations they obtained. The purpose of the present investigation, therefore, was to implement an experimental strategy which complemented and addressed the findings of Nicholson and Kugler. Specifically, the primary aim of the study was to examine the influence of three potentially biasing variables on decisions pertaining to fitness to stand trial through the use of an experimental paradigm.

Overview of Experimental Design

(1) Independent Variables: A series of written hypothetical case vignettes depicting criminal defendants referred for fitness assessments served as the experimental stimuli. These vignettes were designed to investigate variables identified in the literature as elements related to fitness decisions formulated by mental health professionals.

The independent variables were grouped into two factors. The first factor represents the three variables
which are directly relevant to the legal definition of fitness to stand trial: ability to understand the nature/importance of the proceedings; ability to communicate with (defence) counsel; and the presence of a mental disorder. These are referred to as the legally relevant variables and each one had two levels and a set of defining features, as follows:

(i) Understanding the Nature and Importance of the Proceedings: An ability to understand the nature and importance of the proceedings was reflected in an appreciation for the role of the judge and prosecutor as well as for the range and nature of the possible penalties. An inability to understand the nature and importance of the proceedings was indicated by a poor appreciation of the above.

(ii) Communicating with Counsel: An ability to communicate with counsel was indicated by the defendant having contacted his defence attorney and reporting that he felt "understood" and clearly able to relate to his counsel. An inability in this regard was noted by the defendant having contacted an attorney, but reporting that he did not feel "understood" or able to relate to his counsel.

(iii) Mental Disorder: Features of a mental disorder were portrayed according to the presence or absence of psychotic symptoms. A defendant characterized as suffering from a mental disorder manifested symptoms involving delusions,
thought and communication disturbances, disorientation, and bizarre, unmanageable behaviour. Defendants depicted as not suffering from a mental disorder were described as not having any of the above symptoms.

These variables represent the first factor under study and they were manipulated to create four types of fitness conditions. There are vignettes depicting defendants who are Fit to stand trial, Unfit to stand trial and Questionable cases (involving two types of vignettes). Table 1 outlines the relationship between the type of vignette (i.e., the type of fitness scenario depicted in the vignette) and the level of each of the legally relevant variables. As indicated, a Fit vignette depicts a defendant who clearly meets the legal definition of fit to stand trial. The defendant presents as able to understand the nature and importance of the proceedings, able to communicate with counsel and having no current psychotic symptoms. Conversely, a defendant depicted in an Unfit vignette does not meet the criteria for fitness. The defendant presents with an inability to understand the nature and importance of the proceedings, an inability to communicate with counsel, and psychotic symptoms.

Two types of questionable vignettes were also created. Both of these vignettes depict an individual having a moderate degree of psychotic symptoms. In one of the
Table 1
Relationship between Type of Vignette and the Level of each Legally Relevant Variable

<table>
<thead>
<tr>
<th>Legal Variable</th>
<th>Unfit</th>
<th>QuestC*</th>
<th>QuestU*</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Understand Proceedings</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Communicate with Counsel</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Psychotic Symptoms</td>
<td>Yes</td>
<td>Some</td>
<td>Some</td>
<td>No</td>
</tr>
</tbody>
</table>

*Note. QuestC and QuestU are vignettes depicting defendants whose fitness is questionable according to the legal criteria. QuestC refers to a defendant who demonstrated some psychotic symptoms and who is unable to communicate with counsel. QuestU refers to a defendant who also displays some psychotic symptoms and who is unable to understand the proceedings.

vignettes, the defendant presents as able to understand the proceedings but unable to communicate with counsel. In the other vignette, the defendant presents as able to communicate with counsel, but unable to understand the nature and importance of the proceedings. The purpose of creating two Questionable vignettes was to investigate possible differences in how the functional abilities are regarded by decision-makers. In sum, this first factor
reflects a manipulation of the (three) legally relevant variables into four types of vignettes along the dimension of fitness.

In order to investigate the effect of the potential biasing variables on competency decisions, the researcher further subdivided each of the four types of vignettes according to a second factor involving two biasing conditions. One was a Bias-Towards-Unfitness condition and the other was a Bias-Towards-Fitness condition. The defining features for each condition are outlined in Table 2. The three biasing variables involve:

(i) Previous Psychiatric Hospitalizations - defined in the Bias-Towards-Unfitness condition as seven prior psychiatric hospitalizations and in the Bias-Towards-Fitness condition as an absence of such involvements,

(ii) Current Crime - defined in the Bias-Towards-Unfitness condition as attempted murder (violent crime) and in the Bias-Towards-Fitness condition as petty larceny (non-violent crime), and

(iii) Prior Legal Involvements - defined in the Bias-Towards-Unfitness condition as no history of arrests and in the Bias-Towards-Fitness condition as a history of six prior (unspecified) arrests.

The overall design of the study, therefore, involved a 4 (fitness of vignette) x 2 (bias conditions) between subjects design employing eight vignettes. A complete
Table 2

Relationship Between Biasing Conditions and Individual. Legally Irrelevant Variables

<table>
<thead>
<tr>
<th>Biasing Variable</th>
<th>Unfitness</th>
<th>Fitness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior Psychiatric Hospitalizations</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>Current Crime</td>
<td>Attempted Murder</td>
<td>Petty Larceny</td>
</tr>
<tr>
<td>Prior Legal Involvements</td>
<td>0</td>
<td>6</td>
</tr>
</tbody>
</table>

Overview of this design is offered in Table 3. The first factor represents a manipulation of legally relevant variables resulting in 4 types of vignettes (Unfit, Fit, and two Questionable cases). Within this manipulation, the researcher also manipulated legally irrelevant variables in two conditions (Bias-Towards-Unfitness and Bias-Towards-Fitness). Hence each of the four types of vignettes is further subdivided according to the two bias conditions.

In all other respects, each of the eight vignettes was similar in format and content. Each vignette began with a two sentence introduction of the defendant in terms of background information of a demographic nature. This
Table 3

Overview of Experimental Design

<table>
<thead>
<tr>
<th>Type of Vignette</th>
<th>Unfit BTU</th>
<th>Unfit BTF</th>
<th>QuestC BTU</th>
<th>QuestC BTF</th>
<th>QuestU BTU</th>
<th>QuestU BTF</th>
<th>Fit BTU</th>
<th>Fit BTF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Understand</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Proceedings</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communicate</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>with Counsel</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Psychotic</td>
<td>Yes</td>
<td>Yes</td>
<td>Some</td>
<td>Some</td>
<td>Some</td>
<td>Some</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Symptoms</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Previous</td>
<td>7</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>Hospitalizations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current</td>
<td>V</td>
<td>NV</td>
<td>V</td>
<td>NV</td>
<td>V</td>
<td>NV</td>
<td>V</td>
<td>NV</td>
</tr>
<tr>
<td>Crime</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prior Arrests</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>6</td>
</tr>
</tbody>
</table>

* BTU and BTF refer to the two bias conditions. BTU is the Bias-Towards-Unfitness condition, BTF is the Bias-Towards-Fitness condition.

* V and NV refer to the nature of the current crime. V denotes a violent crime (attempted murder) and NV refers to a non-violent crime (petty larceny)
information was held constant throughout each of the vignettes and reflected the typical fitness referral as reported by Nicholson and Kugler (1991). The defendants were described as 32 year old white males, currently unemployed, unmarried, and having completed a grade 10 education. The purpose of offering this information was to present the vignettes as a synopsis of a routine psychiatric report. The eight vignettes are reproduced in Appendix A. A sample vignette of a defendant in the Unfit/Bias-Towards-Unfitness condition is provided below:

The accused, a 32 year old, white male, is referred for an evaluation of his fitness to stand trial. His current charge is related to an attempted murder and the accused's criminal history indicates that he has no prior arrests. He is currently single, unemployed and he has completed a grade 10 education. A summary of his mental status examination reveals that the patient demonstrated impaired thinking and communication, marked by the presence of delusions, disorientation and unmanageable behaviour. He acknowledged approximately 7 previous psychiatric hospitalizations for similar symptoms in the past. When questioned about his current charge and the possible legal implications, the patient stated "attempted murder ain't no big deal". He appeared unable to clearly explain the role of the judge and prosecuting attorney, stating that "the judge yells at people if they are noisy", and about the prosecuting attorney "I don't know... he's the other guy". He also stated that although the had contacted a lawyer, he did not feel that his attorney could "understand" him, noting that they did not "speak" eye to eye. The accused is to remain hospitalized for continued observation and treatment as warranted.

(2) Dependant Variables: Psychiatrists working in the Province of Ontario were solicited to participate in this study. Each psychiatrist was asked to read the vignette which they received and to respond to a series of questions regarding the fitness of the individual depicted in the
case. These dependent measures began with an initial
categorization of the defendant into one of three categories
of fitness: Unfit, Questionable or Fit to stand trial. They
were then presented with 10 additional questions (in the
form of 7 or 11 point Likert-type scales) designed to assess
the effect of the biasing information on their judgement,
and in an effort to understand the decision-making strategy
which the rater employed. These dependent measures included
the following:
(i) a rating of their confidence in forming a fitness
opinion,
(ii) a rating of the defendant's fitness to stand trial from
definitely unfit through to definitely fit to stand trial,
(iii) a rating of their opinion regarding the provision of
adequate information in helping them form an opinion on
fitness,
(iv) a rating of their preference for additional
(unspecified) information to help them form their opinion on
fitness,
(v) a rating of their preference for additional information
regarding the defendant's psychiatric history,
(vi) a rating of their preference for additional information
regarding the defendant's current crime,
(vii) a rating of their preference for additional
information regarding the defendant's prior legal
involvements,
(viii) a rating of their concern for the defendant's ability to understand the nature and importance of the proceedings, 
(ix) a rating of their concern for the defendant's ability to communicate with counsel, and 
(x) a rating of their opinion regarding the defendant's need for continued hospitalization.

The raters were also asked one open ended question regarding what they expect might happen to this defendant if he is found fit to stand trial. As well, the respondents were asked to provide some background information of a demographic nature and regarding their involvement in fitness evaluations.

**Hypotheses**

The following hypotheses were specific to the systematic manipulation of the legally relevant variables in the vignettes. These hypotheses were tested to determine the degree to which the vignettes reflected the fitness categorizations to which they were intended. The hypotheses are:

**Hypothesis 1:** There will be differences in the fitness categorizations (Response Form question number 1) rendered according to the type of vignette. It is expected that most of the Fit vignettes will be categorized as fit, most of the Questionable vignettes will be categorized as questionable,
and most of the Unfit vignettes will be categorized as unfit.

Hypothesis 2: Higher confidence ratings (Response Form question number 2) are expected in the Fit and Unfit vignettes than in the two Questionable vignettes.

Hypothesis 3: Regarding the provision of adequate information (Response Form question number 4), lower ratings are expected for the two Questionable vignettes than for the Fit and Unfit vignettes.

Hypothesis 4: Regarding the preference for additional information (Response Form question number 5) higher ratings are expected for the Questionable vignettes than the Fit and Unfit vignettes.

Hypothesis 5: Greater concern for the defendant's ability to understand the nature and import of the proceedings (Response Form question number 9) will be expressed in the Unfit vignettes than in the Fit vignettes.

Hypothesis 6: Greater concern for the defendant's ability to understand the nature and import of the proceedings (Response Form question number 9) will be expressed for the Questionable vignette depicting a lack of understanding of these legal matters, than for the Questionable vignette highlighting an appreciation of these legal matters.

Hypothesis 7: Greater concern for the defendant's ability to fully communicate with his defence counsel (Response Form
question number 10) will be expressed in the Unfit vignettes than in the Fit vignettes.

Hypothesis 8: Greater concern for the defendant's ability to fully communicate with counsel (Response Form question number 10) will be expressed for the Questionable vignette depicting an inability to communicate, than for the Questionable vignette highlighting an ability in this regard.

Hypothesis 9: Ratings of recommendation for continued psychiatric hospitalization (Response Form question number 11) will differ according to the type of vignette. The Unfit vignettes will evidence higher ratings than the Questionable vignettes, and the Questionable vignettes will evidence higher ratings than the fit vignettes.

In order to determine the effects of the biasing variables on the decision-making tendencies of the psychiatrists, the following hypotheses were proposed:

Hypothesis 10: Within each type of vignette, there will be differences in the fitness ratings rendered (Response Form question number 3) according to the level of the biasing conditions (Bias-Towards-Unfitness/Bias-Towards-Fitness). It is expected that within each type of vignette, defendants in the Bias-Towards-Unfitness condition will be rated as less fit than defendants in the Bias-Towards-Fitness condition.

Hypothesis 11: It is expected that Unfit vignettes depicting a Bias-Towards-Unfitness condition will evidence higher
confidence ratings (Response Form question number 2) than the Unfit vignettes depicting a Bias-Towards-Fitness condition.

Hypothesis 12: It is expected that Fit vignettes depicting a Bias-Towards-Fitness condition will evidence higher confidence ratings (Response Form question number 3) than Fit vignettes depicting a Bias-Towards-Unfitness condition.

Hypothesis 13: It is expected that requests for additional information for the biasing variable prior psychiatric history (Response Form question number 6) will differ according to the type of vignette. Ratings on this item will be higher for the two Questionable vignettes than for either of the Fit and Unfit vignettes.

Hypothesis 14: It is expected that requests for additional information for the biasing variable current crime (Response Form question number 7) will differ according to the type of vignette. Ratings on this item will be higher for the two Questionable vignettes than for either of the Fit and Unfit vignettes.

Hypothesis 15: It is expected that requests for additional information for the biasing variable prior legal involvements (Response Form question number 8) will differ according to the type of vignette. Ratings on this item will be higher for the Questionable vignettes than for either of the Fit and Unfit vignettes.
CHAPTER II

METHOD

Subjects

The population of psychiatrists in Ontario, selected from the Ontario section of the 1988 Canadian Medical Directory, was solicited to participate in this study (n=1064). A total of 318 (30%) usable response forms were returned. This group was selected for study because, in Ontario, opinions regarding the fitness of a defendant to stand trial may only be rendered to the court by a duly qualified medical practitioner.

Procedures

Each psychiatrist received a cover sheet (Appendix B), an Instruction sheet (Appendix C) and one vignette randomly selected from the pool of eight (Appendix A). The instruction sheet indicated the method of consenting to participate in the study and contained a statement regarding the confidentiality of the results and their right to refuse to answer any or all questions. In order to participate in the study, the psychiatrist was asked to review the case vignette and then to record his/her fitness decisions and ratings on the response form enclosed in the packet (Appendix D).
All participants were provided with a postage-paid envelope in which to return the forms. In addition, they were supplied with a postcard (Appendix E) addressed to the researchers to be returned separately from the questionnaires. This allowed the psychiatrists to indicate whether they had responded and whether they would like a brief summary of the findings. The psychiatrists were also notified that returning the postcard indicated their consent to participate in the study.

Finally, a follow-up postcard (Appendix F) was mailed to each prospective respondent one week after the initial mailing of the study materials. This postcard served as a "reminder" to those who had yet to respond, encouraging their timely completion and return of the response form. Psychiatrists who had already completed and returned the questionnaire were thanked for their participation.

Data Analysis

Psychiatrists returning the response form were asked to reveal some information regarding their background as practising clinicians. In order to examine this demographic data, various descriptive statistics were generated. This involved the derivation of statistical means and frequency distributions, as warranted.

The dependent measures of this study involved the twelve questions contained on the response form. The first dependent measure represented a categorization of the
vignette into one of three categories: Fit, Questionable or Unfit to stand trial. In order to examine this data, a hierarchical loglinear analysis was undertaken. The general purpose of such an analysis is to examine the relationships or associations among three or more discrete (categorical, qualitative) variables.

In many respects, a hierarchical loglinear analysis is similar to a two-way chi-square test of association between two discrete variables. For example, a researcher may seek to examine the relationship between psychologists' age (30-39, 40-49, 50-59, 60 and greater) and the type of clinical practice (private, clinic, or hospital). Add a third variable, however, (e.g., clinical orientation as behavioral, cognitive, or psychodynamic) and the possible associations may only be determined through a multiway frequency procedure or, more specifically, by generating a hierarchical loglinear analysis.

In a sense, a hierarchical loglinear analysis represents a "marriage" (Kennedy, p.67) between conventional analysis of variance (ANOVA) procedures and the chi-square goodness of fit test. It's relationship to ANOVA may be seen in some applications of the analysis in which one of the categorical variables is considered as a dependant variable (DV) while the others are regarded as independent variables (IV). (Such is the case in this study, where the fitness categorizations are regarded as the DV).
Accordingly, the researcher may be concerned with the associations between the DV and each IV (i.e., tests of main effects) and associations between the DV and the joint effects of two (or more) IVs (i.e., tests of the interaction effect).

The hierarchical loglinear analysis may also be considered as an extension of the goodness of fit procedures. That is, the analysis seeks to determine whether a distribution of observed frequencies is sufficiently well fitted or compatible with some theoretical form. One theoretical possibility is that the observed cell frequencies can "best" be modelled according to an equiprobability model. (That is, the observed cell frequencies occurred merely as a function of an equal division of the cases into the cells.) This model would represent the simplest explanation of the observed cell frequencies indicating that neither the variables themselves, nor any associations among the variables, account for the observed frequencies. A second possible model (a conditional equiprobability or one-way association model) is somewhat more complex, suggesting that the observed cell frequencies can be "explained" or modelled on the basis of one (or more) individual categorical variables. Likewise, higher order models may also be generated (i.e., two-way, three-way and higher associations) in an attempt to find the closest fit with the observed data. Each model
becomes progressively more complex, incorporating additional variables in a manner similar to that of an additive regression-type equation.

Hence, the hierarchical log-linear analysis involves the derivation of linear models of (the logarithm of) expected cell frequencies for all possible associations. The models are then tested hierarchically from the most parsimonious model (equiprobability) to the most complex (a k-way or "fully saturated" model). The model which adequately explains the data in the simplest terms is accepted. Unlike ANOVA procedures, however, this initial step in the model fitting strategy results in the acceptance, rather than the rejection, of the null hypothesis. Therefore, one adopts the simplest, statistically non-significant model obtained. Although this appears to be inappropriate, it is nevertheless consistent with the chi-square goodness of fit test. That is, a closer match between observed and expected frequencies produces a smaller chi-square value, thereby rendering it more improbable of achieving statistical significance. However, this state of affairs does result in a "better" (goodness of) fit.

After the model is accepted, it may be further interpreted in terms of the various associations or "effects", if any. The researcher may report partial chi-square statistics to reflect the significant associations. Follow-up procedures may then be employed to estimate the
strength of these associations or to determine specific differences among groups. This involves an examination of residuals. A residual is the deviation between the observed and expected frequency in each cell. These residuals may be standardized to produce standard scores, whose statistical significance may be tested according to probability theory.

With regard to the remaining questions in the response form, quantitative data in the guise of seven or eleven point Likert-type scales was obtained. As appropriate, multivariate analyses of variance (MANOVA) and univariate ANOVAs were performed to assess the main and interaction effects of the variables under study.

All statistical analyses were conducted using the Statistical Package for the Social Sciences (SPSSx) program.
CHAPTER III

RESULTS

Background Characteristics of Psychiatrists

Of the 1064 psychiatrists receiving the study materials, 318 (30%) completed and returned the response form. Fifty-seven (17.9%) of the psychiatrists were female and 249 (78.3%) were male while 12 psychiatrists (3.8%) did not indicate their gender on the questionnaire. The mean age of this group was 54 (SD = 10.8) years, and the average length of time in practice since residency was 19.6 (SD = 10.3) years.

With respect to the primary practice setting, 116 (36.5%) psychiatrists reported employment at a private practice, 89 (28%) noted having a position in a psychiatry department of a general hospital, 53 (16.7%) in a psychiatric hospital, and an additional 53 psychiatrists (16.7%) reported employment in some "other" practice setting (e.g. clinic, research facility). Seven of the psychiatrists (2.1%) did not report their primary employment facility on the questionnaire.

One hundred and fifty four (48.4%) psychiatrists reported having previously conducted a fitness evaluation, 161 (50.6%) psychiatrists indicated that they had not, and three individuals (0.9%) did not respond. Of those who had
undertaken fitness assessments in the past, the mean number of evaluations was 69.3 with a median of 9.0. The large discrepancy between the mean and the median is due to 18 psychiatrists who reported conducting a large number of fitness assessments. Finally, 90 (28.3%) individuals indicated that they had previously testified in a fitness to stand trial hearing, 225 psychiatrists (70.8%) indicated that they had not testified in such matters, and three psychiatrists (0.9%) did not answer this question.

Effect of the Manipulation

The purpose of this study was to examine the decision-making tendencies of psychiatrists in their judgements about a criminal defendant's fitness to stand trial. Hypothetical case vignettes were employed to allow a manipulation of variables pertinent to the legal definition of fitness to stand trial and variables which may bias such decisions. A total of eight vignettes were generated involving four types of fitness scenarios (Fit, Unfit and two Questionable cases) and two conditions of bias (Bias-Towards-Fitness and Bias-Towards-Unfitness) for a 2x4 design. (In discussing the results to follow, the (four) types of fitness scenarios may be referred to as the 'type of vignette' or the 'fitness of the vignette' in order to simplify the text.)

Hierarchical loglinear analyses were undertaken to assess the impact of this manipulation on the return rates of the vignettes and on the fitness categorizations rendered
by the psychiatrists. To briefly review, a hierarchical loglinear analysis involves:

(i) generating theoretical models of expected frequencies based on the number of possible associations;
(ii) adopting the most parsimonious model to explain the observed frequencies (identified as a statistically nonsignificant result) and;
(iii) assessing the partial chi-squares and standardized residuals in order to identify significant association(s) and to isolate and estimate the direction and strength of those associations.

Return Rates of the Vignettes

Three hundred and eighteen psychiatrists participated in this study, each reviewing a single vignette chosen at random from the pool of eight. Table 4 presents the observed return rates for each vignette. This return rate was not expected to vary as a function of the bias condition or the fitness of the vignette. In terms of a hierarchical loglinear analysis, therefore, one would anticipate the best fit model to be a simple, equiprobability model.

A hierarchical loglinear analysis was performed to assess the association between the return rate of the vignettes and the (two) bias and (four) fitness conditions. As expected, a good fit between the observed frequencies and the expected frequencies generated by the equiprobability model was found. A non-significant likelihood ratio was
Table 4

Return Rate by Type of Vignette and Bias Condition

<table>
<thead>
<tr>
<th>Bias Condition</th>
<th>Unfit</th>
<th>QuestC*</th>
<th>QuestU*</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfitness</td>
<td>49</td>
<td>34</td>
<td>38</td>
<td>35</td>
</tr>
<tr>
<td>Fitness</td>
<td>39</td>
<td>33</td>
<td>40</td>
<td>50</td>
</tr>
</tbody>
</table>

Note. QuestC is the questionable vignette with the defendant depicted as being unable to communicate with counsel. QuestU is the questionable vignette with the defendant depicted as being unable to understand the nature and importance of the proceedings.

obtained for this lowest order association ($X^2(7) = 7.22$, $p=.41$). The results indicate that the manipulation of bias and fitness conditions did not affect the return rate across the eight vignettes.

Fitness Categorizations

Each psychiatrist was asked to read the information contained in the vignette and to categorize the case as Fit, Questionable or Unfit to stand trial (Response Form question number 1). Hypothesis 1 predicted that most of the Fit vignettes would be categorized as fit, most of the Questionable vignettes as questionable, and most of the
Unfit vignettes as unfit. Translated into the terminology of hierarchical loglinear analysis, one would expect that the model which best matched the observed frequencies would be a two-way association between the fitness of the vignette and the fitness categorizations. In classical Analysis of Variance terms, this would be described as a main effect for the type of vignette.

In this analysis, the fitness judgements were arranged in a three way contingency table in which the dependant variable, fitness category (Fit, Questionable, and Unfit) was cross classified with the type of vignette (Fit, QuestC*, QuestU*, Unfit) and the bias conditions (Bias-Towards-Fitness and Bias-Towards-Unfitness). The resulting 2x4x3 frequency table of observed data is reported in Table 5. Hierarchical loglinear analyses were conducted to model the overall structure of this table and also to examine specific associations between variables.

* Note. To simplify the reading of this chapter, QuestC is used to refer to the Questionable vignette depicting a defendant who is unable to communicate with counsel and QuestU is used to refer to the Questionable case depicting a defendant who is unable to understand the nature and importance of the proceedings.)
Table 5

Frequency of Fitness Categorizations by Bias Condition and Fitness of the Vignette

<table>
<thead>
<tr>
<th>Bias Condition</th>
<th>Unfit</th>
<th>Questionable</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfit</td>
<td>33</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>QuestC</td>
<td>4</td>
<td>18</td>
<td>10</td>
</tr>
<tr>
<td>QuesV-U</td>
<td>13</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td>Fit</td>
<td>0</td>
<td>14</td>
<td>21</td>
</tr>
</tbody>
</table>

Unfitness

<table>
<thead>
<tr>
<th>Fitness</th>
<th>Unfit</th>
<th>Questionable</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfit</td>
<td>27</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>QuestC</td>
<td>7</td>
<td>16</td>
<td>8</td>
</tr>
<tr>
<td>QuestV</td>
<td>12</td>
<td>22</td>
<td>6</td>
</tr>
<tr>
<td>Fit</td>
<td>0</td>
<td>7</td>
<td>43</td>
</tr>
</tbody>
</table>

This analysis indicated that the most parsimonious model was a two-way association. The model had a non-significant likelihood ratio indicating a good fit between the observed frequencies and the expected frequencies generated by a two-way association model $(\chi^2(6)=8.688, p=.19)$.

Tests of partial association revealed a significant two-way association between the fitness of the vignette and the fitness categorization. The partial chi-square value indicates a strong "main effect" for the fitness of the
vignette \((X^2(6) = 191.44, p<.01)\). An examination of the standardized residuals revealed that the direction and strength of the associations were in the expected manner for all cells. (For the interested reader, this table is reproduced in Appendix G). Hence, there was support for hypothesis 1, as there was a tendency for the psychiatrists to classify the vignettes according to the categories which they were predetermined to represent.

It is, nevertheless, of note that not all of the vignettes were correctly classified. This is easily seen in Table 6, which presents the frequency of categorizations by the fitness of the vignette, the bias conditions having been combined. This allows one to investigate trends evident in the miscategorizations. One notes, for example, that in

<table>
<thead>
<tr>
<th>Fitness Category</th>
<th>Type of Vignette</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfit</td>
<td>60</td>
</tr>
<tr>
<td>Questionable</td>
<td>23</td>
</tr>
<tr>
<td>Fit</td>
<td>2</td>
</tr>
<tr>
<td>QuestU</td>
<td>25</td>
</tr>
<tr>
<td>QuestC</td>
<td>34</td>
</tr>
<tr>
<td>Fit</td>
<td>18</td>
</tr>
<tr>
<td>QuestU</td>
<td>43</td>
</tr>
<tr>
<td>Fit</td>
<td>8</td>
</tr>
<tr>
<td>QuestC</td>
<td>64</td>
</tr>
<tr>
<td>Fit</td>
<td>0</td>
</tr>
</tbody>
</table>
misclassifying the Fit and Unfit vignettes, the psychiatrists tended to endorse a Questionable classification (although two of the Unfit vignettes were misclassified as Fit). This trend appears quite reasonable, as psychiatrists seem to have misclassified these vignettes towards a middle ground.

The miscategorizations of the two Questionable vignettes suggest that the psychiatrists may have regarded the two legal abilities differently. The psychiatrists who misclassified the QuestC vignettes seem to be undecided as to the status of the case. Of a total of 29 psychiatrists who misjudged the vignette, 18 considered the defendant as Fit while 11 judged the defendant to be Unfit. In contrast, psychiatrists miscategorizing the QuestU vignettes evidenced a strong tendency to misclassify the defendant as Unfit. Of 33 miscategorizations, only 8 psychiatrists considered the vignette as reflecting a Fit status while 25 psychiatrists placed the defendant in the Unfit category. To determine whether the two Questionable vignettes differed according to the frequency of categorization, a Chi Square analysis was undertaken. The variables cross classified in this analysis were the Fitness categorization (Fit, Questionable, and Unfit) by the Questionable vignettes (QuestC and QuestU). The results indicate a significant difference in classifications ($\chi^2(2) = 9.20, p<.05$). Hence, it appears that psychiatrists reacted to the two questionable vignettes
differently, likely as a function of the legal abilities in question.

**Auxiliary Effects of the Manipulation**

After categorizing the defendant depicted in the vignette, each psychiatrist was asked to respond to a variety of questions related to this initial task. These questions involved Likert-type scales designed to further assess the effect of the manipulation on the task of classifying the defendant. These results are presented below.

**Confidence Ratings**

An ANOVA was performed to determine whether confidence ratings (Response Form question number 2) varied according to the fitness of the vignette and/or the biasing conditions. Three separate hypotheses were generated for this variable. Specifically, it was anticipated that confidence ratings would be higher in the Fit and Unfit vignettes than in the Questionable vignettes (hypothesis 2), confidence ratings would be higher in the Unfit/Bias-Towards-Unfitness condition than in the Unfit/Bias-Towards-Fitness condition (hypothesis 11), and confidence ratings would be higher in the Fit/Bias-Towards-Fitness condition than in the Fit/Bias-Towards-Unfitness condition (hypothesis 12).

Table 7 presents the mean values obtained. A significant main effect was obtained for the fitness of the
vignette ($\chi^2(3, 307) = 6.65, p < .0001$). However, neither a bias nor a bias by fitness interaction effect was obtained. This significant main effect indicates that confidence ratings vary according to the fitness of the vignette (as predicted in hypothesis 2) while the absence of a significant bias or interaction effect suggests that the confidence ratings did not vary as a function of the biasing conditions.

The pattern of means (reported in Table 7) suggests that the highest confidence ratings were offered for judgements about the Fit vignettes ($M=5.54, SD = 1.27$) and were lowest for the QuestU vignettes ($M=4.55, SD = 1.52$). The mean confidence ratings for the Unfit vignettes ($M=5.00, SD = 1.56$) and the QuestC vignettes ($M=5.06, SD = 1.39$) were between these values.

Table 7

<table>
<thead>
<tr>
<th>Type of Vignette</th>
<th>Unfit</th>
<th>QuestC</th>
<th>QuestU</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td>$M$</td>
<td>5.00$^{bd}$</td>
<td>5.06$^{bc}$</td>
<td>4.55$^{bce}$</td>
<td>5.54$^{bcd}$</td>
</tr>
</tbody>
</table>

Note. Higher ratings indicate greater confidence ranging from 1 to 7; Means with similar superscripts differ significantly at $p < .05$ according to a Tukey test.
A review of the planned comparisons revealed that three of the 4 contrasts were significant. Specifically, confidence ratings of the Unfit vignettes were higher than the QuestU vignettes ($t(311) = 2.00, p < .05$). As well confidence ratings of the Fit vignettes were higher than the QuestC vignettes ($t(311) = 2.02, p < .05$) and the QuestU vignettes ($t(311) = 4.39, p < .001$). (The lone comparison which did not yield significance was between the Unfit and QuestC vignettes). These analyses indicate partial support for hypothesis 2, that confidence ratings would be higher in the Fit and Unfit vignettes than in the Questionable Vignettes.

A further review of the means highlights differences in the mean confidence ratings which were unexpected. First, it appears that confidence ratings for the Fit vignettes were higher than those offered for the Unfit vignettes. Second, the confidence ratings of the QuestC vignettes appeared higher than for the QuestU vignettes. To test whether these differences were significant, post hoc comparisons using a Tukey honestly-significant difference procedure was undertaken. Both comparisons revealed significant differences at $p < .05$. 
** Provision of Information

An ANOVA was performed to assess differences in mean ratings regarding the provision of adequate information (Response Form question number 4). Hypothesis 3 predicted that lower ratings would be offered by psychiatrists reviewing the Questionable vignettes than by those responding to the Fit and Unfit vignettes. Table 8 presents the mean ratings by type of vignette. The ANOVA revealed a significant effect of type of vignette on ratings of the provision of information \(F(3,313) = 9.15, p<.001\).

The pattern of means reveals the lowest ratings were obtained for the QuestC vignettes \((M=3.43, SD = 1.43)\) and QuestU \((M=3.14, SD = 1.53)\) vignettes, with the highest ratings in the Fit vignettes \((M=4.27, SD = 1.79)\) and the Unfit vignettes \((M=4.22, SD = 1.85)\). As expected, all planned comparisons were significant. The QuestC vignettes received lower ratings than the Fit vignettes \((t(313) = 3.07, p<.005)\) and the Unfit vignettes \((t(313) = 2.88, p<.001)\). Similarly, the QuestU vignettes were accorded lower ratings than the Fit vignettes \((t(313) = 4.30, p<.001)\) and the Unfit vignettes \((t(313) = 4.13, p<.001)\). Hence there was support for hypothesis 3, that lower ratings would be accorded to the Questionable vignettes than for the Fit and Unfit vignettes.
Table 8

Mean Ratings of Provision of Adequate Information by Type of Vignette

<table>
<thead>
<tr>
<th>Type of Vignette</th>
<th>Unfit</th>
<th>QuestC</th>
<th>QuestU</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4.22^ab</td>
<td>3.43^ac</td>
<td>3.14^cd</td>
<td>4.27^cd</td>
</tr>
</tbody>
</table>

Note. Higher ratings indicate stronger agreement regarding provision of adequate information ranging from 1 to 7; Means with similar superscripts differ significantly at p<.05 according to a Tukey test.

Preference for Additional Information

An ANOVA was performed to assess differences in mean ratings regarding the preference for additional (unspecified) information to aid in the decision-making task (Response Form question number 5). Hypothesis 4 predicted that the ratings would be highest in the Questionable vignettes and lowest in the Fit and Unfit vignettes. Table 9 presents the mean ratings by type of vignette. The ANOVA revealed a significant effect of type of vignette on ratings of preference for additional information ($F(3,314) = 8.12$, p<.001).
Table 9

Mean Ratings of Preference for Additional Information by Type of Vignette

<table>
<thead>
<tr>
<th>Type of Vignette</th>
<th>Unfit</th>
<th>QuestC</th>
<th>QuestU</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5.86&lt;sup&gt;ab&lt;/sup&gt;</td>
<td>6.73&lt;sup&gt;ac&lt;/sup&gt;</td>
<td>6.53&lt;sup&gt;bd&lt;/sup&gt;</td>
<td>5.81&lt;sup&gt;cd&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

Note. Higher ratings indicate stronger preferences for additional information ranging from 1 to 7; Means with similar superscripts differ significantly at p < .05 according to a Tukey test.

The pattern of means revealed the highest ratings in the QuestC vignettes (M = 6.73, SD = .57) followed by the QuestU vignettes (M = 6.53, SD = 1.14). The ratings for the Unfit Vignettes (M = 5.86, SD = 1.81) and the Fit vignettes (M = 5.81, SD = 1.68) were both lower. All of the planned comparisons were significant indicating support for hypothesis 4. Specifically, higher ratings of preference for additional information were obtained for the QuestC vignettes than for the Fit (t(314) = 3.93, p < .001) and Unfit vignettes (t(314) = 3.74, p < .001). Similarly, the QuestU vignettes evidenced higher mean ratings than the Fit (t(314) = 3.19, p < .005) and the Unfit vignettes (t(314) = 2.94, p < .005).
Concern for the Defendant's Understanding of the Proceedings

An ANOVA was performed to assess differences in mean ratings of concern for the defendant's understanding of the nature and importance of the proceedings (Response Form question number 9). Hypothesis 5 predicted that these ratings would be higher in the Unfit than in the Fit vignettes. As well, hypothesis 6 predicted that psychiatrists reviewing the Questionable vignettes depicting an inability in this regard (QuestU) would evidence higher ratings than psychiatrists reviewing the Questionable vignettes depicting an inability to communicate with counsel (QuestC). Table 10 presents the mean values obtained. The ANOVA revealed a significant effect of the fitness of the vignette on ratings of concern (for the defendant's ability to understand the nature and importance of the proceedings (F(3,314) = 32.67, p<.0001).

The pattern of means revealed the highest ratings for the Unfit (M=5.96, SD = 1.21) and the QuestU vignettes (M=5.50, SD = 1.50). The QuestC vignettes (M=4.64, SD = 1.75) and the Fit vignettes (M=3.84, SD = 1.60) had lower ratings. All planned comparisons were significant, indicating support for hypotheses 5 and 6. The ratings were higher for the Unfit vignettes than for the Fit vignettes (F(314) = 9.22, p<.001) and for the QuestU vignettes than for the QuestC vignettes (F(314) = 3.41, p<.001).
Table 10

**Mean Ratings of Concern for the Defendant's Ability to Understand the Nature and Importance of the Proceedings by Type of Vignette**

<table>
<thead>
<tr>
<th>Type of Vignette</th>
<th>Unfit</th>
<th>QuestC</th>
<th>QuestU</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5.96&lt;sup&gt;a&lt;/sup&gt;</td>
<td>4.64&lt;sup&gt;b&lt;/sup&gt;</td>
<td>5.50&lt;sup&gt;b&lt;/sup&gt;</td>
<td>3.84&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

*Note.* Higher ratings indicate greater concern ranging from 1 to 7; Means with similar superscripts differ significantly at p<.05 according to a Tukey test.

**Concern for the Defendant's Ability to Communicate with Counsel**

An ANOVA was performed to assess differences in mean ratings of concern for the defendant's ability to communicate with counsel (Response Form question number 10). Hypothesis 7 predicted that these ratings would be higher in the Unfit than in the Fit vignettes. Hypothesis 8 predicted that psychiatrists reviewing the Questionable vignettes depicting an inability in this regard (QuestC) would evidence higher ratings than psychiatrists reviewing the Questionable vignettes depicting an inability to understand the nature and importance of the proceedings. Table 13.
presents the mean values obtained. The ANOVA revealed a significant effect of the fitness of the vignette ratings of concern for the defendant's ability to communicate with counsel ($F=(3.313) = 32.51$, $p<.0001$).

The pattern of means reveals the highest ratings for the Unfit vignettes ($M=6.02, SD = 1.13$) and the lowest ratings for the Fit vignettes ($M=4.02, SD = 1.54$). Ratings of concern for the QuestC vignettes ($M=5.44, SD = 1.42$) and QuestU vignettes ($M=5.56, SD = 1.49$) fell between these values. The planned comparisons revealed support for hypothesis 7 as ratings of concern for the Unfit vignettes

Table 11

Mean Ratings of Concern for the Defendant's Ability to Communicate with Counsel by Type of Vignette

<table>
<thead>
<tr>
<th>Type of Vignette</th>
<th>Unfit</th>
<th>QuestC</th>
<th>QuestU</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6.02$^{abc}$</td>
<td>5.44$^{bd}$</td>
<td>5.56$^{ce}$</td>
<td>4.02$^{ade}$</td>
</tr>
</tbody>
</table>

Note. Higher ratings indicate greater concern ranging from 1 to 7; Means with similar superscripts differ significantly at $p<.05$ according to a Tukey test.
were significantly higher than for the Fit vignettes \(t(313) = 9.41, p < .001\). The results do not support hypothesis 8, as a comparison of the means of the two Questionable vignettes did not result in a significant difference.

**Effect of the Biasing Variables**

The biasing variables employed in this study involved the defendant's prior legal and psychiatric history and the nature of the current crime. These variables were combined to represent two levels of bias, namely a Bias-Towards-Fitness and a Bias-Towards-Unfitness condition. The impact of the biasing variables was assessed through the fitness categorizations, fitness ratings, and the individual questions. These results are presented below.

**Fitness categorizations**

As discussed earlier in this text (pp.67-69), a three way frequency analysis was performed to develop a hierarchical loglinear analysis of the fitness categorizations. This analysis permitted the researcher to assess the association between the bias conditions and the fitness categorizations. Neither of the possible associations involving the biasing variables revealed a significant effect. Hence, no effect of biasing conditions on fitness categorizations was obtained. (For the interested reader, these partial chi-squares are reported in Appendix H.)
Fitness Ratings

An ANOVA was performed to determine whether fitness ratings (Response Form question number 3) varied according to the fitness of the vignette, the biasing condition, or as a result of a bias by fitness interaction. Hypothesis 10 predicted that within each type of vignette, defendants in the Bias-Towards-Unfitness condition would be rated as less fit (i.e., receive lower ratings) than the defendants in the Bias-Towards-Fitness condition. Table 12 presents the mean values obtained in this 2x4 design. A significant main effect was obtained for the fitness the vignette ($F(3,305) = 84.88, p<.0001$) and a significant 2 way interaction of the fitness and bias conditions was also obtained ($F(3,305) = 3.202, p<.05$). A main effect for the bias conditions was not obtained.

A significant main effect for the fitness of the vignette suggests that the raters accorded fitness ratings consistent with the type of vignette they received. This effect is noted in Table 12, as defendants depicted in the Unfit vignettes received the lowest ratings (towards the "unfit" end of the 11 point scale), those in the two Questionable vignettes received moderate ratings, and the defendants depicted in the Fit vignettes received the highest (i.e., "fit") ratings. The presence of a two way interaction suggests partial support for hypothesis 10. That is, the psychiatrists appear influenced in their
Table 12
Mean Fitness Ratings by Type of Vignette and Bias Condition

<table>
<thead>
<tr>
<th>Bias Condition</th>
<th>Unfit</th>
<th>QuestC</th>
<th>QuestU</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfitness</td>
<td>3.78</td>
<td>6.28</td>
<td>4.66a</td>
<td>7.97b</td>
</tr>
<tr>
<td>Fitness</td>
<td>3.37</td>
<td>5.96</td>
<td>5.74a</td>
<td>9.05b</td>
</tr>
<tr>
<td>(Total)</td>
<td>(3.60)</td>
<td>(6.12)</td>
<td>(5.22)</td>
<td>(8.61)</td>
</tr>
</tbody>
</table>

Note. Higher ratings indicate a stronger degree of fitness to stand trial from 1 = Unfit to 11 = Fit; Means with similar superscripts differ significantly at p<.05.

fitness ratings as a function of the bias condition (for at least some of the vignette categories). In particular, planned comparisons revealed a significant bias effect for the Fit vignettes ($F(1,83) = 7.64$, $p<.05$) and the QuestU vignettes ($F(1,75) = 4.91$, $p<.05$). These effects are evident in Figure 1, which presents the mean fitness ratings by type of vignette and bias condition. The pattern of means reveals significantly different ratings in the Fit and QuestU vignettes as a function of the bias conditions.

This effect was particularly interesting in the Fit
Figure 1

Fitness Ratings by Type of Vignette and Bias Condition
vignettes, since the mean fitness rating for the Fit/Bias-Towards-Unfitness vignette 'fell' into the questionable range of the scale. In order to determine if these differences in fitness ratings were also evident in the original fitness categorizations, a Chi-Square analysis of the fitness categorizations was undertaken. Table 13 presents the frequency of categorizations offered for the Fit vignettes by the biasing conditions. A significant association was obtained ($X^2(1) = 7.97$, $p < .005$). Hence, the impact of the bias on the psychiatrists reviewing the Fit/Bias-Towards-Unfitness vignette appears not only to involve a reduction in the fitness rating, but also a categorical change in the fitness decision being rendered.

Table 13
Fitness Categorizations for the Fit Vignette by the Bias Conditions

<table>
<thead>
<tr>
<th>Bias Condition</th>
<th>Vignette Categorization</th>
<th>Questionable</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfitness</td>
<td></td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td>Fitness</td>
<td></td>
<td>7</td>
<td>43</td>
</tr>
</tbody>
</table>
Another interesting finding, suggested by the data reported in Table 12, is the apparent difference in mean fitness ratings between the two Questionable vignettes (the bias conditions being combined). Specifically, the mean fitness rating for the QuestC vignettes \((M=6.12, \text{SD} = 2.31)\) was higher than for the QuestU vignettes \((M=5.22, \text{SD} = 2.18)\). A closer inspection of the mean fitness ratings, however, suggests that this difference varies as a function of the bias effect. That is, in the Bias-Towards-Fitness condition, the difference in mean ratings between QuestC \((M=5.96, \text{SD} = 2.23)\) and QuestU \((M=5.74, \text{SD} = 2.17)\) is not significant. However, for the Bias-Towards-Unfitness condition, the difference in mean ratings between QuestC \((M=6.28, \text{SD} = 2.41)\) and QuestU \((M=4.66, \text{SD} = 2.08)\) reveals a substantial and significant discrepancy \((t(148) = 4.479, p<.001)\). Hence, the difference between the two Questionable vignettes appears to reside in a bias effect in the QuestU vignettes.

**Ratings of Preference for Information of the Biasing Variables**

The biasing conditions represented a combination of three variables, involving the presence or absence of a prior psychiatric history, previous involvement or non-involvement with the legal system, and the nature of the current crime (violent or non-violent). Accordingly,
ratings of preference for more information about these variables (Response Form questions number 6, 7, and 8) were expected to vary as a function of the type of vignette received. Specifically, it was anticipated that mean ratings of preference for additional information pertaining to the defendant's psychiatric history (hypothesis 13), current crime (hypothesis 14), and prior legal involvements (hypothesis no. 15) would be higher in the Questionable vignettes (QuestC and QuestU) than in the Fit and Unfit vignettes.

Since these three variables are not independent, a multivariate analysis of variance (MANOVA) was performed to assess the impact of the type of vignette and bias condition on all three variables. The MANOVA revealed a main effect for the fitness of the vignette ($F(3, 915) = 2.03, p<.05$) and a main effect for the biasing conditions ($F(1, 303) = 4.58, p<.005$). No interaction effects were obtained.

Univariate F-tests indicated significant differences in the mean ratings for previous psychiatric history ($F(1, 305) = 3.202, p<.05$) and current crime ($F(1, 305) = 4.706, p<.005$), but not for previous legal involvements. Table 14 presents the mean ratings obtained for each of the variables by the type of vignette.

The pattern of means for the psychiatric history variable indicated the highest ratings were accorded to the QuestU ($M=5.68, SD = 1.86$) and QuestC ($M=5.46, SD = 1.75$)
Table 14
Mean Ratings of Requests for Additional Information Regarding the Individual Biassing Variables by Type of Vignette

<table>
<thead>
<tr>
<th>Biassing Variable</th>
<th>Unfit</th>
<th>QuestC</th>
<th>QuestU</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Psychiatric history</td>
<td>4.84&lt;sup&gt;a&lt;/sup&gt;</td>
<td>5.45</td>
<td>5.68&lt;sup&gt;ab&lt;/sup&gt;</td>
<td>4.96&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>Current Crime</td>
<td>4.29&lt;sup&gt;ab&lt;/sup&gt;</td>
<td>5.00&lt;sup&gt;a&lt;/sup&gt;</td>
<td>5.41&lt;sup&gt;b&lt;/sup&gt;</td>
<td>4.85</td>
</tr>
<tr>
<td>Prior Legal Involvements</td>
<td>3.98</td>
<td>4.62</td>
<td>4.79</td>
<td>4.44</td>
</tr>
</tbody>
</table>

Note. Higher ratings indicate stronger requests for information ranging from 1 to 7; Means with similar superscripts differ significantly at p<.05 according to a Tukey test.

vignettes, followed by the Fit (M=4.96, SD = 2.00) and finally the Unfit (M=4.84, SD = 2.19) vignettes. Both planned comparisons involving the QuestU vignettes were significant, as these vignettes received considerably higher ratings than the Unfit (t(313) = 2.73, p<.01) and Fit vignettes (t(313) = 2.31, p<.05). The comparisons between QuestC and the Fit and Unfit vignettes were not significant. The results reveal partial support for hypothesis 13 that preference ratings for additional information regarding the
defendant's psychiatric history would be higher in the Questionable vignettes than in the Fit and Unfit vignettes.

The pattern of means for the current crime variable indicated the highest ratings were accorded to the QuestU (M=5.41, SD = 1.86) and QuestC (M=5.00, SD = 2.03) vignettes, followed by the Fit (M=4.84, SD = 1.96) and finally the Unfit (M=4.28, SD = 2.20) vignettes. The planned comparisons indicate that the QuestC vignettes received higher ratings than the Unfit vignettes (t(314) = 2.18, p<.05). As well, the QuestU vignettes also received higher ratings than the Unfit vignettes (t(314) = 3.58, p<.001). The comparisons between the two Questionable vignettes and the Fit vignettes were not significant. The results reveal partial support for hypothesis 14 that preference ratings for information regarding the defendant's current crime would be higher in the Questionable vignettes than in the Fit and Unfit vignettes.

With regards to the main effect for bias, univariate F-Tests indicated that the bias influence was only significant for the current crime variable (F(1,305) = 7.01, p<.01). The ratings of preference for this information were higher in the Bias-Towards-Unfitness condition (M=5.18, SD = .62) than in the Bias-Towards-Fitness condition (M=4.56, SD = .96) across all types of vignettes. Hence, irrespective of the fitness of the vignette, there was a stronger degree of preference for information about the alleged offence if the
scenario involved a violent crime (attempted murder) as opposed to a nonviolent crime (petty larceny).

Ratings of Recommendations for Continued Hospitalization

An ANOVA was performed to assess the effect on recommendations for continued hospitalization (Response Form question number 11) of the fitness of the vignette and the biasing conditions. Hypothesis 9 predicted that these ratings would be highest for the Unfit vignettes, moderate for the Questionable vignettes and lowest for the Fit vignettes. Table 15 presents the mean values obtained. The Anova revealed a significant effect of type of vignette on ratings of recommendation for continued hospitalization ($F(3,301) = 46.06, p<.001$).

The pattern of means indicates that the ratings of recommendation for continued hospitalization were high for the Unfit vignettes ($M=6.14, SD = 1.12$), moderate for the QuestC ($M=5.35, SD = 1.56$) and QuestU ($M=5.33, SD = 1.73$) vignettes, and low for the Fit vignettes ($M=3.36, SD = 1.99$). A review of the planned comparisons indicates that all of the planned contrasts were significant. Specifically, ratings in the Unfit vignettes were higher than in the QuestC vignettes ($t(309) = 2.92, p<.005$) and the QuestU vignettes ($t(309) = 3.16, p<.005$). As well, ratings of continued hospitalization were lower in the Fit vignettes
Table 15

Mean Ratings of Recommendations for Continued Hospitalization by Type of Vignette

<table>
<thead>
<tr>
<th>Type of Vignette</th>
<th>Unfit</th>
<th>QuestC</th>
<th>QuestU</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6.14&lt;sup&gt;ab&lt;/sup&gt;</td>
<td>5.35&lt;sup&gt;ac&lt;/sup&gt;</td>
<td>5.33&lt;sup&gt;bd&lt;/sup&gt;</td>
<td>3.36&lt;sup&gt;cd&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

Note. Higher ratings indicate stronger recommendations ranging from 1 to 7; Means with similar superscripts differ significantly at p<.05 according to a Tukey test.

than in the QuestC (t(309) = 7.30, p<.001) and QuestU (t(309) = 7.68, p<.001) vignettes. Hence the planned comparisons revealed support for hypothesis 9, as psychiatrists recommended continued hospitalization in a manner consistent with the fitness of the vignette which they received.

Finally, an ANOVA was undertaken to assess the impact of the biasing variables on recommendation for continued hospitalization. A significant interaction of bias and fitness was obtained (F(3,301) = 8.11, p<.01). Table 16 presents the means obtained on recommendations for continued hospitalizations by type of vignette and bias conditions. Planned comparisons revealed significant bias effects.
Table 16  
**Mean Ratings of Recommendations for Continued Hospitalization by Type of Vignette and Bias Condition**

<table>
<thead>
<tr>
<th>Bias Condition</th>
<th>Unfit</th>
<th>QuestC</th>
<th>QuestU</th>
<th>Fit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfitness</td>
<td>6.12</td>
<td>5.68</td>
<td>5.87&lt;sup&gt;a&lt;/sup&gt;</td>
<td>4.69&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>Fitness</td>
<td>6.16</td>
<td>5.03</td>
<td>4.83&lt;sup&gt;a&lt;/sup&gt;</td>
<td>2.44&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

**Note.** Higher ratings indicate stronger recommendations ranging from 1 to 7; Means with similar superscripts differ significantly at p<.05.

Involving the Fit vignettes (F(1,76)=7.67, p<.05) and the QuestU vignettes (F(1,83) = 37.17, p<.0001). In both types of vignettes, the bias conditions appear to significantly influence the ratings of recommendation for continued hospitalization.

**Exploratory Analyses**

Two ANOVAs were conducted to test the possibility that the bias effect noted in the fitness ratings was related to the psychiatrists' experience with fitness assessments. In one analysis, the psychiatrists were divided according to whether or not they had conducted a fitness evaluation. In the second analysis, the psychiatrists were grouped according to the number of evaluations undertaken, where
eight assessments or less represented the low condition and
nine or more represented a high level of experience.
Neither of the ANOVAs produced a significant effect
regarding the experience of the psychiatrists. Additionally,
an ANOVA was conducted to assess the impact of gender on the
fitness ratings. No significant effects were obtained.
Hence, neither gender nor the experience of the rater (vis a
vis fitness assessments) is related to the bias effect noted
in the fitness ratings.
A criminal defendant is considered Unfit to stand trial if, due to the presence of a mental disorder, the individual is unable to understand the nature and importance of the proceedings and/or communicate with counsel. In this study, these (legally relevant) variables were manipulated to create four hypothetical fitness scenarios: Fit to stand trial, Unfit to stand trial, and Fitness Questionable (2 types of vignettes). In each vignette, the defendant was described as a 32 year old single male, who is currently unemployed and has a grade 10 education. In the vignette depicting a defendant as Fit to stand trial, he was presented as not having any psychotic symptoms and as capable of understanding the proceedings and communicating with counsel. In the vignette portraying the defendant as Unfit to stand trial, he was said to display symptoms of a psychotic disorder and presented as neither able to understand the proceedings nor communicate with counsel. In the vignettes where the defendant's fitness was designed to appear Questionable, he was depicted as suffering from a
moderate number of psychotic symptoms and as capable of meeting only one of the two legally relevant abilities.

The first question addressed was whether the psychiatrists were able to classify the vignettes into the fitness categories which they were predetermined to represent. The results confirmed that, in general, the Fit vignettes were categorized as fit, the Questionable vignettes as questionable, and the Unfit vignettes as unfit to stand trial. In effect, the psychiatrists successfully classified the vignettes according to the fitness categorizations which they were predetermined to represent.

A number of dependant measures were generated to further assess the effect of the manipulation of the legal variables on the psychiatrists' perceptions of the vignettes. The results indicate that psychiatrists who reviewed the two questionable vignettes were less confident about their judgements than those who reviewed the Fit and Unfit vignettes. Further, they expressed a stronger preference for additional information and were less likely to agree that they had adequate information than psychiatrists who reviewed the Fit and Unfit vignettes.

Collectively, these findings indicate that the vignettes were representative of the (four) types of fitness scenarios which they were intended to represent. The psychiatrists were able to classify the vignettes into the appropriate fitness categories and, responded to questions
about the vignettes (and the defendant depicted therein) in a manner predicted by, and consistent with the types of vignettes they reviewed.

These findings are important for two reasons. First, they demonstrate that the manipulation of the legal variables to represent specific fitness classifications was successful. The vignettes present a clear, consistent, and distinct picture of four fitness categories (as evidenced by the psychiatrists' ability to classify them). Second, they indicate that the psychiatrists categorized the vignettes in a manner consistent with the legal definition of fitness to stand trial. That is, when one controls for the biasing variables, the vignettes differ only with regard to the legal criteria. Given that the psychiatrists were able to classify the majority of the cases correctly, it appears that they relied on the legal standards in offering a fitness categorization. This finding is consistent with that reported by Nicholson and Kugler (1991), that the strongest correlates of fitness decisions involve the defendant's psycholegal ability.

**Effect of Legally Irrelevant Information on Fitness Decisions**

Within the framework of manipulating variables corresponding to the legal standard of fitness, three legally irrelevant variables were also manipulated. These variables involved the nature of the alleged crime committed
by the defendant, his previous legal involvements, and previous psychiatric history. Although they are not relevant to the legal criteria for determining fitness to stand trial, previous research (e.g., Nicholson and Kugler, 1991) has found these variables to correlate with fitness decisions. Therefore, it was hypothesized that this group of variables would bias the decision-making tendencies of the psychiatrists in rendering a rating of the hypothetical defendant's fitness to stand trial. Specifically, psychiatrists reviewing vignettes depicting defendants in a Bias-Towards-Fitness condition (non-violent crime, six prior arrests, and no previous psychiatric hospitalizations) were expected to offer fitness ratings reflecting a stronger degree of fitness to stand trial than psychiatrists reviewing vignettes with defendants in the Bias-Towards-Unfitness condition (violent crime, no prior arrests and seven previous psychiatric hospitalizations). This was expected to be found across all four types of vignettes. The findings indicate that this hypothesis was supported for two of the four fitness categories: the Fit vignettes, and the Questionable vignettes reflecting a lack of understanding of the nature and importance of the proceedings.

This finding represents an important contribution towards identifying the presence of bias in fitness judgements. Earlier reports by Nicholson and Kugler (1991)
had raised the possibility that these three variables might bias judgements about a defendant's fitness status. As the authors noted, however, the correlational nature of their study suggested at least two interpretations of the results. Specifically, the correlations between legally irrelevant variables and fitness decisions may signify biases in the fitness decision or they may reflect true differences between defendants found Fit and Unfit to stand trial. Since this study employed an experimental strategy, however, we may now draw stronger inferences about the nature of the effect of biasing information on fitness judgements. That is, this investigation confirms that psychiatrists are, in fact, influenced by biasing information in rendering an opinion regarding a criminal defendant's fitness to stand trial, at least under certain circumstances.

**Implications of this Study**

The findings from this study have important implications regarding the nature of fitness assessment procedures, decision-making processes, and decision-making strategies. As well, a consideration of the impact of biased decisions on the lives of criminal defendants is warranted.

**Implications Regarding Fitness Assessment Procedures**

Historically, forensic clinicians have been criticized for not paying enough attention to the legal criteria in considering a criminal defendant's fitness to stand trial
(Roesch and Golding, 1980). This state of affairs seems to be changing, however, and the psychiatrists in this study do not appear to be guilty of such omissions. On the contrary, they may be commended for their performance given that their fitness categorizations were generally consistent with the legal standard. These findings are promising, suggesting that the psychiatrists were cognizant of the legal criteria which they considered in arriving at a fitness decision.

However, it is important to note that the psychiatrists were influenced by legally irrelevant information in forming their judgements (i.e., fitness ratings). This was true of psychiatrists reviewing vignettes depicting defendants who were fit to stand trial and defendants whose fitness was questionable by virtue of being unable to understand the nature and importance of the proceedings. This suggests that the integrity of the evaluation may suffer in the presence of extraneous information. This concern is of particular importance given that the psychiatrists indicated notable preferences for additional information regarding each of the three biasing variables.

It is also of concern in light of the findings from the psychiatrists who reviewed the Fit vignettes. When the background information indicated that the defendant had been charged with a nonviolent crime, had six prior arrests, and no previous psychiatric hospitalizations, the psychiatrists tended to evaluate this defendant as fit to stand trial. In
contrast, when the background information revealed that he was charged with a violent crime, had no prior legal involvements, and had been previously hospitalized, the psychiatrists tended to see the individual's fitness status as Questionable. It is of note that, in this latter case, the psychiatrists evidenced stronger preferences for information about the alleged crime and stronger recommendations for continued hospitalization. This type of bias suggests that the psychiatrists may be confused about the difference between the issues of insanity (the individual's mental state at the time of the offense) and fitness to stand trial (the individual's ability to meet the legal standards of fitness at the time of evaluation). In fact, a number of psychiatrists indicated that, if found fit to stand trial, the defendant might ultimately be found not guilty by reason of insanity. Since the vignettes did not include information about the defendant's mental state at the time of the offence, this type of response suggests that some psychiatrists may still be confusing these two issues. This would be consistent with the findings of previous research (e.g., Miller and Germaine, 1987; Roesch and Golding, 1978).

The possibility that psychiatrists may confuse the issues of fitness and insanity, and that biases may play into fitness decisions, highlights the importance of adopting assessment procedures which severely limit the
introduction of legally irrelevant information. Typically, a criminal defendant is evaluated by means of a mental status examination, an interview as to the defendant's personal history (including psychiatric and legal factors), and an assessment of fitness, among other procedures (Holmstrup, et al., 1981). Inadvertently, the evaluator may be eliciting information which may bias his/her judgement of fitness. In order to improve the assessment process, two suggestions may be offered. First, standardized fitness assessment instruments should be incorporated into the evaluation. These instruments demonstrate sound psychometric properties (Nicholson et al., 1988) and may be used to arrive at a seemingly less biased opinion of fitness given their clear focus only on the relevant legal criteria. Second, a two stage evaluation procedure could be employed. The first stage would only involve a determination of the defendant's ability to understand the nature and importance of the proceedings and to communicate with counsel. If the defendant is found capable in these regards, the finding would be Fit to stand trial. However, if the defendant is found deficient in either of these functional abilities, the second stage would involve a determination of whether this deficiency is due to the presence of a mental disorder. This two stage procedure would help obviate the introduction of biasing elements into the fitness decision. As well, the second stage would provide the opportunity to collect
information which may be relevant to additional psychiatric or legal concerns.

Implications Regarding the Decision-Making Process

Roesch et al. (1984) suggested that the decision-making process employed by psychiatrists may be to judge a defendant's fitness to stand trial first, and then to make specific ratings which are consistent with this judgement. In this study, the psychiatrists were asked to render an initial categorization, considered as a global judgement of the defendant's fitness to stand trial. They were then asked to respond to a series of questions pertaining to the nature of the vignettes and the defendant depicted therein. In effect, the psychiatrists were led to use the decision-making approach proposed by Roesch et al. (1984). It is of interest, therefore, to note that the psychiatrists' ratings on variables related to the legal criteria tended to be consistent with their overall fitness judgements.

Consider, for example, the pattern of ratings obtained from the psychiatrists reviewing defendants depicted as Unfit to stand trial. They frequently endorsed the appropriate fitness category (Unfit to stand trial), and offered fitness ratings which were commensurate with that classification. They evidenced the highest ratings of concern for the defendant's functional abilities (of understanding the proceedings and communicating with counsel), and the highest ratings of recommendations for
continued hospitalization. In a similar fashion, psychiatrists reviewing individuals depicted as Fit to stand trial categorized the case accordingly and offered fitness ratings consistent with that judgement. Their ratings of concern for the defendant's functional abilities and need for hospitalization are the lowest. And, between these two extremes, psychiatrists reviewing Questionable cases also revealed a consistency between their overall classification (of Questionable fitness) and moderate ratings to questions pertaining to the legal criteria. In sum, the psychiatrists displayed an internally consistent decision-making process. Once they decided upon an overall fitness classification, they rendered judgments consistent with that opinion.

Implications Regarding Decision-making Strategies

An evaluation of the defendant's functional abilities is to be given considerable attention before recommending a fitness status (Grisso, 1986). In this investigation, the Questionable vignettes portrayed the defendant as deficient in only one of the functional abilities as well as having some psychotic symptoms. The defendant either understood the nature and importance of the proceedings but could not communicate with counsel, or he could communicate with counsel but appeared unable to understand the proceedings. This design offered the opportunity to investigate possible differences in how the two abilities are regarded by the psychiatrists.
A review of the miscategorizations of the two Questionable vignettes suggests that the psychiatrists regard the functional abilities in a dissimilar manner. The miscategorizations offered by the psychiatrists reviewing the Questionable vignettes depicting the defendant as unable to understand the proceedings more frequently involved a classification of Unfit to stand trial. In contrast, the psychiatrists reviewing the vignettes depicting the defendant as unable to communicate with counsel do not appear to favour one fitness disposition over another (i.e., Fit or Unfit) in their miscategorizations or, if there is any tendency at all, it may be to find the defendant as Fit to stand trial.

In addition, the psychiatrists reviewing the Questionable vignettes depicting the defendant as unable to understand the proceedings were affected by the biasing information in their fitness ratings. Hence, when the case is Questionable by virtue of this inability, the psychiatrists seem to be influenced by extraneous information in their judgement of fitness. In this case, the defendant's inability to understand the proceedings, combined with a history of previous psychiatric hospitalizations, an absence of prior legal involvements, and a current crime of violence may influence the psychiatrists to see the defendant as less capable of standing trial. In comparison, a bias effect of this nature
was not obtained for the Questionable vignettes depicting the defendant as unable to communicate with counsel.

These results offer two possible explanations. The first account is that psychiatrists may differentially assess the two legal standards in arriving at their judgements. It appears that the standard of "understanding the proceedings" may function as a more critical or influential criterion in the minds of the evaluators. Deficiencies in this ability may leave the evaluator less clear about the judgment and, therefore, both more cautious in his/her opinion and more influenced by extraneous information. Conversely, when the defendant appears unable to communicate (but able to understand the proceedings), the psychiatrists appear unaffected by biasing information and less likely to find the defendant Unfit to stand trial. Hence, the criteria of "understanding the proceedings" seems to be considered more critical to the fitness decision, relative to the ability to communicate with counsel. This explanation is of interest since the two functional criteria are to be given equal weight in the fitness decision. An alternative explanation, however, is that these results are a function of the construction of the vignettes. In this case, the differences may simply reflect differential depictions of the abilities in terms of the level of impairment as described in the case scenario. Additional experimental approaches which are currently underway (Bagby,
Personal communication) may serve to address this possibility.

**Implications for Criminal Defendants**

Of the various implications of bias in fitness decisions, the most important one lies in its impact on the lives of criminal defendants. On the one hand, biases may affect the judgement of the psychiatrist such that he/she incorrectly finds a defendant Fit to stand trial. In this case, the individual may participate in his/her trial despite being incapable of doing so. This type of effect was not noted in this study. On the other hand, biases may affect the judgement of the psychiatrist such that he/she tends to incorrectly find a defendant Unfit to stand trial. In this case, the defendant may not participate in a trial despite being capable of doing so. In both scenarios, the medico-legal systems of justice will have failed the defendant. The findings from this study suggest that this latter situation may be more prevalent, given the presence of bias effects obtained for the Fit vignettes.

For defendants who are Fit to stand trial, the repercussions of such a bias may not be as extreme as to involve an indefinite incarceration or a postponement of the trial. It may, however, mean the difference between a brief (24 hour) assessment and a 30 day inpatient incarceration. That is, in considering the defendant's fitness status to be Questionable, the psychiatrist must, by law, treat the
patient as if he/she is Unfit to stand trial. This necessitates that the individual be held for a period of "observation" (Gibson, 1988 p. 234), until such a time as the person's fitness to proceed to trial can be confirmed. Typically, the defendant is reevaluated at the end of a month long incarceration at which time the majority of those referred are considered Fit to stand trial (Roesch, 1979). The impact of a bias may be to prolong the defendant's inpatient visit. Thus, for a defendant who is Fit to stand trial, this bias could translate into a substantial loss of personal freedom and may subject the individual to unjustified incarceration if he/she is eventually acquitted of the charge.

Limitations of the study

The findings from this study may be limited owing to the use of hypothetical case vignettes to investigate the clinical decision-making process. Critics of this form of research have argued that the information derived from such studies is lacking in ecological validity. They claim that clinicians behave differently with "real" patients (Elstein, 1988, p.37) owing to motivational or cognitive factors. These criticisms have not, however, gone unchallenged. As Elstein (1988) contended, clinicians tend to find clinical simulations quite engaging. Further, they demonstrate strong motivation to perform well since they regard the case simulation as a test of their clinical ability. Elstein
(1988) also argued that studies using vignettes provide "the opportunity to display the best of clinical judgement, undistracted by competing demands" (p.38). The decision-maker has the opportunity in the case simulation to ignore the problems of cognitive overload and the variety of distractions which are present in actual clinical work. Hence, there is no reason to believe that the psychiatrists would have offered different fitness judgements (or have been affected in a different fashion by biasing information) had they been faced with "real" defendants in genuine clinical situations. In fact, as Bagby et al. (1991) stated in defense of the use of hypothetical scenarios in their study, the results of studies employing hypothetical cases may represent "the best in decision making" since the psychiatrists were allowed "a more thoughtful weighing of the facts" (p.32). Further, the clear advantage of this strategy is that it allows one to investigate causal influences and interactional effects which are precluded in field studies. Hence, while one may concede that the findings lack definite generalizeability to actual events, they do identify the presence of biasing influences which had been previously suggested in correlational studies.

One of the difficulties with case scenarios involves interpreting the results in light of the respondents' subjective interpretation of the material presented to them. For example, psychiatrists reviewing the vignettes depicting
the defendant in the Fit/Bias-Towards-Fitness condition may have understood the defendant's appreciation of his legal charge in one of two manners. In this case, the defendant reported that petty larceny "ain't no big deal". To some psychiatrists, this may have been regarded as a statement indicating the defendant's appreciation of the charge, where on a continuum of charges, this one is relatively minor. Other psychiatrists, however, may have concluded that this reply reflects poorly on the defendant given that he has a past history of six prior arrests. For this group, the defendant's statement may reflect a deficient appreciation of the seriousness of the offence, thus compromising the defendant's fitness status in their eyes. In this regard, the psychiatrists' subjective interpretations of the information may lead to different ratings of the defendant's ability to meet the functional criteria. In effect, this represents a type of variance which one cannot adequately control. Overall, however, the pattern of results in this study suggest that this was not a particular problem. In general, the psychiatrists rated the defendant's capacity (or incapacity) to meet the functional criteria in a manner consistent with intent of the case scenario.

A Comment on the Meaning of "Bias" in Decisions of Fitness to Stand Trial

Within the psychotherapy literature, the term bias has implied some form of prejudice, pre judgment, or systematic
error introduced into the clinical decision-making arena (Lopez, 1989). The underlying notion was that clinicians did not necessarily act as objective, unbiased observers but that they imparted their own personalized judgments onto the clinical decision. These judgments were considered, at least in part, to be a function of stereotypic ideas concerning a variety of sociodemographic variables. For example, Lopez (1991) has commented on an "overpathologizing bias" (p.184) in which clinician's appear to find one group of patients as more disturbed than another group based on gender or race.

In the area of fitness to stand trial, bias has implied a systematic, erroneous judgment based, in part, on legally irrelevant information. In effect, the meaning of bias in this psycholegal context has represented essentially the same thinking as applied to the general, psychotherapeutic realm. The question which may be raised, therefore, is whether this meaning of bias is accurate in light of the results obtained in this study.

The findings suggest that, for some of the psychiatrists, the meaning of bias as a distorted judgment may be applicable. It appears to be true of the psychiatrists reviewing the vignettes depicting the defendant as Fit to stand trial. Approximately half of this group received information described as a Bias-Towards-Fitness condition while the other half reviewed data
conceptualized as a Bias-Towards-Unfitness condition. The findings indicate that the differences in fitness ratings between these two groups were in the direction predicted by the intent of the biasing variables. Since the defendant's fitness status was clearly established within the vignette (and generally well recognized by the psychiatrists in terms of their responses), this result suggests an obvious transgression of the rules of fitness judgments. In this case, one can have considerably more confidence in considering this form of bias as an "unreasoned distortion of judgment" (Fish, 1985, p.147), perhaps reflective of underlying personal or professional attitudes of the psychiatrists.

In contrast, the bias effect noted for the psychiatrists reviewing the vignettes depicting a defendant whose status is Questionable suggests an alternative view of "bias". In these vignettes, the legally irrelevant information is presented in such a fashion as to leave the decision-maker with a very difficult task. The match between the criteria of fitness (both the psycholegal abilities and the presence of a mental disorder) is unclear. Under these circumstances, the psychiatrist may astutely rely on legally irrelevant information if it could prove helpful in terms of directing his decision in one direction or another. For example, knowledge of the defendant's seven prior hospitalizations for psychotic symptoms may be a
highly salient piece of information, used to predict the likelihood of the defendant's fitness, at a trial occurring one month after the initial assessment. While this information is legally irrelevant it may not necessarily be an instance of bias defined as "unreasonable distortion of judgment" (Mish, 1985, p.147). It is possible that clinicians rely on knowledge of base rates or subjective probabilities given the ambiguous data provided, and that this leads to an "accurate judgment instead of an erroneous judgment" (Lopez, 1989). This may depend on whether knowledge of legally irrelevant information lends itself to systematic or highly personalized errors of judgment or whether it is combined with empirical evidence and clinical judgment on a case by case basis. Additional studies may help sort out this issue.

Conclusions and Directions for Future Research

The findings in this study represent an initial experimental investigation aimed at understanding the nature of the relationship between biasing influences and fitness decisions. Given that the presence of bias in such decisions has been demonstrated, a number of considerations for future research may be offered. First, the results of this study should be replicated with another sample of psychiatrists. This will serve to cross-validate the findings. Second, subsequent projects are needed to investigate the relative influence of each of the legally
relevant and irrelevant variables on fitness decisions. This 2x2x2x2x2x2 design would involve a complete randomization of the legally relevant variables (mental disorder, understanding the proceedings, communicate with counsel) and the legally irrelevant variables (current crime, prior legal involvements, previous psychiatric history). As well, one could create vignettes in which only the legally relevant variables were randomized (and with the legally irrelevant variables omitted), thus providing a control condition. This methodology would provide the opportunity to discern the relative importance of each of the variables (as well as the directionality of any bias) towards the fitness decisions.

It is also of note that this study focused on only three potentially biasing variables. They were selected because, in previous studies (Nicholson and Kugler, 1991), they demonstrated the strongest correlations with fitness judgements. Previous research (Rogers et al, 1988; Nicholson and Kugler, 1991; Nicholson and Johnson, 1991) has revealed additional correlates of fitness decisions which also point to the influence of biases in fitness opinions. For instance, reliable correlations between the defendant's status of Unfit to stand trial and variables such as age, marital status and gender have been obtained. These sociodemographic variables may also be explored in experimental investigations such as the one reported here.
Finally, judgements about fitness to stand trial need to be researched in terms of the underlying attitudes and beliefs of the decision-makers themselves. We must go beyond identifying the presence of bias in such decisions (and perhaps correcting for it) to address the larger context in which the bias exists. It may very well be representative of a set of attitudes which are deeply embedded within the care-giving professions. For example, the presence of the bias effect noted in this study may be reflective of a particular decision-making attitude among clinicians. We need to establish connections between our understanding of bias in fitness decisions and the underlying (personal and societal) attitudes held by the decision-makers.

In conclusion, the findings from this project present a mixed review of psychiatrists as evaluators of fitness to stand trial. On the one hand, the psychiatrists in this study were able to correctly classify the defendants depicted in the hypothetical vignettes. As such, they seemed to rely appropriately on the legal standards in rendering their fitness categorizations and may be commended in this regard. On the other hand, the psychiatrists appear to have accorded different levels of importance to the individual functional criteria of fitness and, at least under some conditions, to be influenced by biasing information in arriving at their opinions of fitness. These
findings suggest that there is still room for improvement, particularly with respect to fitness assessment procedures and decision-making practices.
APPENDIX A

HYPOTHETICAL CASE VIGNETTES
SUMMARY OF ASSESSMENT INFORMATION

The accused, a 32 year old, white male, is referred for an evaluation of his fitness to stand trial. His current charge is related to an attempted murder and the accused's criminal history indicates that he has no prior arrests. He is currently single, unemployed and has completed a grade 10 education. A summary of his mental status examination reveals that the patient demonstrated impaired thinking and communication, marked by the presence of delusions, disorientation and unmanageable behaviour. He acknowledged approximately 7 previous psychiatric hospitalizations for psychotic symptoms in the past. When questioned about his current charge and the possible legal implications, the patient stated: "attempted murder ain't no big deal". He appeared unable to clearly explain the role of the judge and prosecuting attorney stating simply that the judge "yells at people if they are noisy" and about the prosecuting attorney "I don't know...he's the other guy". He also stated that although he had contacted a lawyer, he did not feel that this attorney could "understand" him, noting that they did not "speak" eye to eye. The accused is to remain hospitalized for continued observation and treatment as warranted.

(VIGNETTE 1: UNFIT TO STAND TRIAL / BIAS-TOWARDS-UNFITNESS)
SUMMARY OF ASSESSMENT INFORMATION

The accused, a 32 year old, white male, is referred for an evaluation of his fitness to stand trial. His current charge is related to a petty larceny and the accused's criminal history indicates that he has 6 prior arrests. He is currently single, unemployed and has completed a grade 10 education. A summary of his mental status examination reveals that the patient demonstrated impaired thinking and communication, marked by the presence of delusions, disorientation and unmanageable behaviour. He reported no previous psychiatric hospitalizations for psychotic symptoms in the past. When questioned about his current charge and the possible legal implications, the patient stated: "petty larceny seems pretty serious to me". He appeared unable to clearly explain the role of the judge and prosecuting attorney, stating simply that the judge "yells at people if they are noisy" and about the prosecuting attorney "I don't know...he's the other guy". He also stated that although he had contacted a lawyer, he did not feel that this attorney could "understand" him, noting that they did not "speak" eye to eye". The accused is to remain hospitalized for continued observation and treatment as warranted.

(VIGNETTE 2: UNFIT TO STAND TRIAL / BIAS-TOWARDS-FITNESS)
SUMMARY OF ASSESSMENT INFORMATION

The accused, a 32 year old, white male, is referred for an evaluation of his fitness to stand trial. His current charge is related to an attempted murder and the accused's criminal history indicates that he has no prior arrests. He is single, unemployed and has completed a grade 10 education. A summary of his mental status examination indicates that the patient did not demonstrate impaired thought or communication processes, with an absence of delusions, disorientation or unmanageable behaviour. He did, however, acknowledge 7 previous psychiatric hospitalizations for psychotic symptoms in the past. When questioned about his current charge and the possible legal implications, the patient stated: "attempted murder seems pretty serious to me". He appeared able to explain the roles of the judge and prosecuting attorney, stating that the judge "is like the big boss", and about the prosecuting attorney "he's kinda out there to make me look bad". He also stated that he had contacted a lawyer who he felt "understood" his case noting that "we 'speak' eye to eye". The accused is to remain hospitalized for continued observation and treatment as warranted.

(VIGNETTE 3: FIT TO STAND TRIAL / BIAS-TOWARDS-UNFITNESS)
SUMMARY OF ASSESSMENT INFORMATION

The accused, a 32 year old, white male, is referred for an evaluation of his fitness to stand trial. His current charge is related to a petty larceny and the accused's criminal history indicates that he has 6 prior arrests. He is single, unemployed and has completed a grade 10 education. A summary of his mental status examination indicates that the patient did not demonstrate impaired thought or communication processes, with an absence of delusions, disorientation or unmanageable behaviour. He also reported having no previous psychiatric hospitalizations. When questioned about his current charge and the possible legal implications, the patient stated: "petty larceny ain't no big deal". He appeared able to explain the roles of the judge and prosecuting attorney, stating that the judge "is like the big boss", and about the prosecuting attorney "he's kinda out there to make me look bad". He also stated that he had contacted a lawyer who he felt "understood" his case noting that "we 'speak' eye to eye". The accused is to remain hospitalized for continued observation and treatment as warranted.

(VIGNETTE 4: FIT TO STAND TRIAL / BIAS-TOWARDS-FITNESS)
SUMMARY OF ASSESSMENT INFORMATION

The accused, a 32 year old, white male, is referred for an evaluation of his fitness to stand trial. His current charge is related to an attempted murder and the accused's criminal history indicates that he has no prior arrests. He is single, unemployed and has completed a grade 10 education. A summary of his mental status examination reveals that the patient demonstrated impaired thought and communication processes including periodic disorientation. When asked whether he had been hearing any unusual sounds or voices, the patient replied that he did not "want to talk about that". His behaviour was neither bizarre nor unmanageable and delusions were not noted. He did, however, acknowledge 7 previous psychiatric hospitalizations for psychotic symptoms in the past. When questioned about his current legal charge and the possible legal implications, the patient stated: "attempted murder seems pretty serious to me". He appeared able to explain the roles of the judge and prosecuting attorney, stating that the judge "is like the big boss", and about the prosecuting attorney "he's kinda out there to make me look bad". He did report, however, that although he had contacted a lawyer, he did not feel that this attorney could "understand" him, noting that they did not "speak' eye to eye". The accused is to remain hospitalized for continued observation and treatment as warranted.

(VIGNETTE 5: FITNESS QUESTIONABLE – UNABLE TO COMMUNICATE / BIAS-TOWARDS-UNFITNESS)
SUMMARY OF ASSESSMENT INFORMATION

The accused, a 32 year old, white male, is referred for an evaluation of his fitness to stand trial. His current charge is related to a petty larceny and the accused's criminal history indicates that he has 6 prior arrests. He is single, unemployed and has completed a grade 10 education. A summary of his mental status examination reveals that the patient demonstrated impaired thought and communication processes including periodic disorientation. When asked whether he had been hearing any unusual sounds or voices, the patient replied that he did not "want to talk about that". His behaviour was neither bizarre nor unmanageable and delusions were not noted. He reported no previous psychiatric hospitalizations for psychotic symptoms in the past. When questioned about the current legal charge and the possible legal implications, the patient stated: "petty larceny ain't no big deal". He appeared able to explain the roles of the judge and prosecuting attorney, stating that the judge "is like the big boss", and about the prosecuting attorney "he's kinda out there to make me look bad". He did report, however, that although he had contacted a lawyer, he did not feel that this attorney could "understand" him, noting that they did not "speak' eye to eye". The accused is to remain hospitalized for continued observation and treatment as warranted.

(VIGNETTE 6: FITNESS QUESTIONABLE - UNABLE TO COMMUNICATE / BIAS-TOWARDS-FITNESS)
SUMMARY OF ASSESSMENT INFORMATION

The accused, a 32 year old, white male, is referred for an evaluation of his fitness to stand trial. His current charge is related to an attempted murder and the accused's criminal history indicates that he has no prior arrests. He is single, unemployed and has completed a grade 10 education. A summary of his mental status examination reveals that the patient demonstrated impaired thought and communication processes including periodic disorientation. When asked whether he had been hearing any unusual sounds or voices, the patient replied that he did not "want to talk about that". His behaviour was neither bizarre nor unmanageable and delusions were not noted. He did, however, acknowledge 7 previous psychiatric hospitalizations for psychotic symptoms in the past. When questioned about the current legal charge and the possible legal implications, the patient stated "attempted murder ain't no big deal". He appeared unable to clearly explain the role of the judge and prosecuting attorney stating simply that the judge "yells at people if they are noisy" and about the prosecuting attorney "I don't know...he's the other guy". He did, however, report that he had contacted a lawyer who he felt "understood" his case noting that "we 'speak' eye to eye". The accused is to remain hospitalized for continued observation and treatment as warranted.

(VIGNETTE 7: FITNESS QUESTIONABLE - UNABLE TO UNDERSTAND / BIAS-TOWARDS-UNFITNESS)
SUMMARY OF ASSESSMENT INFORMATION

The accused, a 32 year old, white male, is referred for an evaluation of his fitness to stand trial. His current charge is related to a petty larceny and the accused's criminal history indicates that he has 6 prior arrests. He is single, unemployed and has completed a grade 10 education. A summary of his mental status examination reveals that the patient demonstrated impaired thought and communication processes including periodic disorientation. For instance, when asked whether he had been hearing any unusual sounds or voices, the patient replied that he did not "want to talk about that". His behaviour was neither bizarre nor unmanageable and delusions were not noted. He reported no previous psychiatric hospitalizations for psychotic symptoms in the past. When questioned about the current charge and the possible legal implications, the patient stated: "petty larceny seems pretty serious to me". He appeared unable to clearly explain the role of the judge and prosecuting attorney stating simply that the judge "yells at people if they are noisy" and about the prosecuting attorney "I don't know...he's the other guy". He did, however, report that he had contacted a lawyer who he felt "understood" his case noting that "we 'speak' eye to eye". The accused is to remain hospitalized for continued observation and treatment as warranted.

(VIGNETTE 8: FITNESS QUESTIONABLE - UNABLE TO UNDERSTAND / BIAS-TOWARDS-FITNESS)
APPENDIX B

COVER SHEET
Dear Doctor:

Legislative efforts are currently underway to reform the Canadian Criminal Code guidelines pertaining to issues of a criminal defendant's Fitness to Stand Trial. Many changes to the legal requirements and procedures have been proposed. We are asking you to provide some valuable input regarding the various factors which mental health professionals may regard as salient to such decisions.

The legal and clinical significance associated with judgements about fitness to stand trial cannot be emphasized enough, as recent estimates suggest that as many as 5,000 fitness evaluations are conducted annually in Canada. In rendering these decisions, the Canadian criminal courts have frequently requested the assistance of psychiatric professionals on a case by case basis. This state of affairs, in conjunction with proposed amendments to the criminal code, has highlighted the need for investigations of the important factors contributing to those judgements.

In the following pages, we are asking you to participate in a study of this matter. This project is part of a Doctoral Dissertation conducted by Mr. Stewart Plotnick, M.A., at the Department of Psychology, University of Windsor. This questionnaire is very easy to complete and requires only 10 to 15 minutes of your time. There is no cost to you and the anonymity of your participation and confidentiality of your responses will be maintained. We simply ask that you participate to the best of your ability, regardless of your background in forensic assessment.

Please see the instruction sheet which follows. We thank you, in advance for your assistance.

Sincerely,

James E. Porter, Ph.D., C.Psych.  Stewart G. Plotnick, M.A.
Associate Professor of Psychology  Department of Psychology
University of Windsor  University of Windsor
(Research Supervisor)  (Principal Investigator)

R. Robert Orr, Ph.D., C.Psych.  Brian Burke, M.D.
Chair, Department of Psychology  Staff Psychiatrist
University of Windsor  Windsor Western Hospital

Dear Doctor,

The purpose of this study is to explore factors relevant to decisions regarding a criminal defendant's fitness to stand trial. In Canadian criminal law, there is a principle that an accused person must be present mentally and physically during his/her court proceedings. As a matter of legal practice, questions about a person's mental health and its effects on his/her ability to participate in the court proceedings are sometimes raised. When this is the case, a judge may send the person to a medical doctor for an assessment of his/her "fitness to stand trial". According to Section 615 (1) of the Criminal Code:

A court, judge or a provincial court judge may, at any time before verdict, where it appears that there is sufficient reason to doubt that the accused is, on account of insanity, capable of conducting his defence, direct that an issue be tried whether the accused is then, on account of insanity, unfit to stand trial.

Should a person be found unfit to stand trial, the Lieutenant Governor of the province assumes responsibility for the person. Typically, the person is treated in custody until he/she is fit to stand trial.

Enclosed is a case vignette of an individual assessed for his fitness to stand trial. The vignette offers some background history on the defendant and a synopsis of an interview conducted by a psychiatrist, summarized in paragraph form. We are simply asking that you review the particulars of the case in rendering your judgements. The person depicted and the related circumstances have been contrived but are typical of the cases seen by forensic psychiatrists.

On the response form, you are asked to offer your opinions regarding the fitness to stand trial of the individual depicted in the case vignette. You may omit any questions that you would prefer not to answer, and you may withdraw from participating in this study at any time.

Although you may not have completed a fitness assessment as part of your practice, we would still greatly appreciate your participation in this project. This should
entail no more than 10 to 15 minutes of your time. Please note that the response form contains a number at the top of the page. Please do not destroy this number as it is our only means of matching your responses to the vignette which you have received. All information which you provide will be held strictly confidential. Your name will not be disclosed, nor will you be identified in any way with the results of the study.

A postage paid envelope has been included for the return of the materials. We have also included a postage paid postcard which may be sent back in advance of returning these forms. You may indicate your consent to participate in this study by signing the postcard. Please check the box provided if you would like to receive a summary of the results. As a final request, we ask that you return this postcard even if you are unable to participate in this study.

This study has been reviewed and cleared by the Ethics Committee of the University of Windsor. If you have any concerns regarding ethical issues, please direct them to the Office of Research Services, University of Windsor, Windsor, Ontario, N9B 3P4.

We thank you for the time and attention given to our study. Should you have any questions or concerns at any time, please call Stewart Plotnick at 519-256-8734.

Stewart G. Plotnick, M.A.  James E. Porter, Ph.D., C.Psych.
Department of Psychology  Associate Professor of Psychology
University of Windsor  University of Windsor
(Principal Investigator)  (Research Supervisor)
RESPONSE FORM

1. Based on the summary of assessment information which you have just read, please provide an opinion regarding this person's fitness to stand trial: UNFIT____ Questionable____ FIT____

2. How much confidence do you place in your opinion:

   1  2  3  4  5  6  7
   Not at all  Somewhat  Fully
   Confident   Confident  Confident

3. Based on the information which you have just read, please provide an opinion regarding the degree of this person's fitness to stand trial:

   1  2  3  4  5  6  7  8  9  10  11
   1--UNFIT--1-------- QUESTIONABLE --------1----FIT----1

4. Did the case vignette provide adequate information in helping you form your opinion?

   1  2  3  4  5  6  7
   No, Not  Somewhat  Yes
   at all     definitely

5. Would you have preferred additional information in helping you form your opinion?

   1  2  3  4  5  6  7
   No, Not  Somewhat  Yes
   at all     definitely

6. Would additional information regarding the individual's prior psychiatric history have been helpful to you in formulating your fitness decision about this individual?

   1  2  3  4  5  6  7
   No, Not  Somewhat  Yes
   at all     definitely

7. Would additional information regarding the current crime have been helpful to you in formulating your fitness decision about this individual?

   1  2  3  4  5  6  7
   No, Not  Somewhat  Yes
   at all     definitely
8. Would additional information regarding the individual's prior legal involvements have been helpful to you in formulating your fitness decision about this individual?

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<tr>
<th></th>
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<th>2</th>
<th>3</th>
<th>4</th>
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<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td>definitely</td>
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9. How concerned are you that this defendant may not fully understand the nature and importance of his criminal proceedings?

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<td>Very Concerned</td>
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</table>

10. How concerned are you that this defendant may have difficulty communicating fully with his counsel?

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<td>Very Concerned</td>
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11. Would you recommend that this individual remain hospitalized?

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<td>Yes definitely</td>
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</table>

12. What do you expect might happen to this individual if, in a court of law, he is found fit to stand trial?

BACKGROUND INFORMATION

Birthdate ___/___/____ Sex: Female male (circle one)

Day Month Year

Number of years in practice since residency _____

Primary Practice Setting: ( ) Private Practice
( ) Psychiatric Hospital
( ) General Hospital- Psychiatric Unit
( ) Other (please specify)
Area of Speciality

Have you ever conducted an evaluation regarding fitness to stand trial? ( ) YES ( ) NO
If Yes, how many fitness evaluations have you conducted?

Have you ever testified at a fitness to stand trial hearing in court? ( ) YES ( ) NO
APPENDIX E

POSTCARD - CONSENT TO PARTICIPATE
Study on Decision Making in Fitness to Stand Trial

I have read and understood the instructions provided.

___ I agree to participate and will complete and return the questionnaire.

___ I am unable/unwilling to participate in the study.

Please send me a summary of the results of this project: Yes____ No____

__________________________________________
(Signature)

Thank You,
Stewart Plotnick, M.A.
(Principal Researcher)

Return Address (on back side)

James E. Porter, Ph.D., C.Psych.
Department of Psychology
University of Windsor
Windsor, Ontario
N9B 9Z9
APPENDIX F

FOLLOW-UP POSTCARD
Dear Doctor,

Last week, we sent you a short questionnaire to complete concerning a criminal defendant's fitness to stand trial.

If you have already completed and returned it to us, please accept our sincerest thanks. If not, please do so today. Because it has been sent to a small sample of Canadian Psychiatrists, it is extremely important that your responses be included in the study.

If by some chance you did not receive the materials, or if they were misplaced, please call right now, collect (519-256-8734) and we will get another one in the mail to you today.

James E. Porter, Ph.D., C.Psych.  Stewart G. Plotnick, M.A.  
Associate Professor of Psychology  Department of Psychology  
University of Windsor  University of Windsor  
(Research Supervisor)  (Principal Investigator)

R. Robert Orr, Ph.D., C.Psych.  Brian Burke, M.D.  
Chair, Department of Psychology  Staff Psychiatrist  
University of Windsor  Windsor Western Hospital
APPENDIX G
STANDARDIZED RESIDUALS
Standardized Residuals obtained from the Hierarchical Loglinear Analysis of Fitness Categorizations

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APPENDIX H

PARTIAL CHI-SQUARE STATISTICS
Partial Associations for the Hierarchical Loglinear Analysis of Fitness Categorizations.

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(*) Note. The partial chi-square was significant at p<.001
APPENDIX I

INTERCORRELATION MATRIX
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* - Significant at p<.05;  ** - Significant at p<.01

CONF  - confidence rating
FITRAT - Fitness rating
SATINF - Provision of adequate information
ADDINF - Request for additional information (general)
PSYHX - Request for information of psychiatric history
CRIME - Request for information of current crime
LEGAL - Request for information of prior legal involvements
UNDER - Concern for defendant's understanding of nature and importance of the proceedings
COMM - Concern for defendant's ability to communicate with counsel
HOSP  - Recommendation for continued hospitalization
REFERENCES


Vita Auctoris

Stewart Glenn Plotnick was born on June 28, 1963 in Montreal, Quebec to Bernie and Betty Plotnick. In 1980, he received his High School Diploma from Herzliah High School. In 1982, he received his Diplome D'etude Collegiale from Vanier College. In 1985, he graduated from McGill University with a Bachelor of Science degree, Major in Psychology. Since September, 1986, he has been enrolled in the graduate program in clinical psychology at the University of Windsor, where he graduated with a Master of Arts degree in 1988.

He is presently married to Sandra June Plotnick (Cameron) and has a daughter, Meghan Dawn Plotnick.