did not predict well (i.e., reliably) how evaluators would respond.

Dr. Schacht notes that the "brief vignettes" may not have been psychometrically sound. In fact, we never claimed that they were. In contrast, we made every effort to point out the limitations of the vignettes and did not try to extrapolate our findings beyond those limitations. Notwithstanding, we would like to point out that real criminal defendants who are undergoing competency-to-stand-trial evaluations are also not "psychometrically adequate." Our vignettes were based on actual fact situations in which competency to stand trial was raised, evaluated, and decided. We believe that our vignettes approximated real life situations, with all the inherent limitations thereof. From this perspective, our study might more accurately be considered an examination of efficiency rather than efficacy.

Our study was a first attempt (a pilot study, if you will) to see if those performing evaluations on a regular basis would agree on the operational meaning of the three standards of competence and the appropriate application of each to different trial scenarios, regardless of the limited information provided. The answer is that they could not. The next step in improving the reliability (and universality) of evaluations of competence to stand trial is to try to identify sources of confusion and disagreement and eliminate them.

As professionals, we have an obligation to improve our methodology. As such, we should work to shed light on the issues by engaging in dialogue with each other, with our coprofessionals—forensic psychologists, lawyers, and judges—who also deal with individuals affected by the problem (i.e., criminal defendants), and with the public at large. Our study uncovered a fundamental problem in the fairness (or, conversely, arbitrariness) of competence evaluations, and we must respond. Dr. Leong's implied suggestion that the problem be ignored (because the legal profession won't change), or that we be satisfied with imperfect competency assessment instruments, may be convenient, but is not optimally ethical.

As two of the authors of our study are practicing forensic psychiatrists who routinely conduct these evaluations, we certainly would have preferred not to uncover this problem. We cannot, however, deny the devastating implications of our findings. Something appears to be fundamentally wrong with competency-to-stand-trial assessments. Instead of ignoring the problem and conducting "business as usual," we must work together to solve the problem. The conclusion of our article contains specific recommendations to do just that.

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Editor:

As a Canadian Administrative Law Judge and Review Board Chair, with jurisdiction over mentally disordered offenders, I found the article by Balachandra *et al.* (J Am Acad Psychiatry Law 32:173–7, 2004) troubling.

As the article finds itself published in a journal purporting to speak to the dual disciplines of psychiatry and law, I assume the authors consider themselves "forensic personnel." *Black's Law Dictionary* defines forensic as "belonging to the courts of justice" and forensic medicine as the "application of medical knowledge to the purposes of the law." That being the case, the authors demonstrated a considerable lack of understanding of Canadian law and the legal process.

The authors misstated the impact of the Supreme Court of Canada's landmark decision in *Winko*:

"From . . . a practical perspective mentally ill individuals could be released prematurely with respect to their own health and/or risk to the public" (p 174). This statement communicated the authors' belief, however erroneous, that prior to *Winko* individuals may have been detained for health or "best interests" reasons. In fact, *Winko* merely reiterates the established proposition that accused persons may be detained and deprived of their liberties only as long as they pose a foreseeable, nontrivial, significant threat to public safety.

The test of "significant threat," which *Winko* defines and crystallizes, is a legal not a psychiatric concept and has never been equated with what a physician might consider to be in the patient's best interests. That was the law well before *Winko* and remains the law of Canada (since 1992). The only change *Winko* brought about was to clarify that a finding of significant threat must be a positive conclusion based on evidence; that jurisdiction over an accused based on doubt or uncertainty about significant threat cannot be justified.

I remind the authors as well that, insofar as the assessment of "significant threat" is essentially a prediction of future events or human behavior, *Winko* quite properly indicates that though the index offense or its seriousness is an appropriate factor to consider, it is not dispositive in terms of predicting future threat (p 177).

I would also definitively add that the *Winko* decision has not had the effect of rendering this "plea" more attractive, with a corresponding influx of new cases. Research suggests that individuals who avail themselves of this verdict are likely to spend much longer periods in detention than do those who are dealt with in the corrections system for having committed similar offenses.

Finally, I remind your authors that the Review Boards are required to deliberate and consider the evidence and the law in every case (p 177), and must give reasons that legally justify the ultimate decision.

As a decision maker who hears and decides literally hundreds of such cases, I can assure your researchers that *Winko*, along with the dispositive section of the Canadian Criminal Code that it illuminates (S.672.54), are considered at every hearing and inform every disposition made.

The statements that, "Unfortunately, the deliberation is a confidential matter," and the suggestion of reducing legal reasons to ". . . a standardized form . . . which allows for rigorous study in the future" (p 177) (presumably by forensic psychiatrists), show a lack of understanding of western legal process and the constitutionally protected concept of independence in decision making, on the part of Balachandra and colleagues.

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Reply

Editor:

Judge Walter accurately describes the Review Board process in Canada. He clarifies the concept of significant threat. However, his critique of the sentence "From a practical perspective, mentally ill individuals could be released prematurely . . ." requires clarification. The reader should place emphasis on the word "could." Finally, he takes issue with the sentence, "Perhaps a standardized form could be used when the reasons for disposition are made which allow for further rigorous study in the future." Limitations of our study were stated, including the difficulty in studying the complex decision-making process of the Review Board in a retrospective chart review. The development of a form was merely a suggestion.

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