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Educator of the Court: The Role of the Expert Witness in Cases Involving Autism Spectrum Disorder

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Abstract

The role of the expert witness in legal contexts is to educate fact finders of the court who may have no background in the expert's area. This role can be especially difficult for those who assist in cases involving individuals with Autism Spectrum Disorder (ASD). As expert assistance on ASD is crucial to ensuring just outcomes for individuals diagnosed with ASD, knowledge on how expert witnesses perceive and approach their roles, and what factors may influence these perceptions, is essential. This qualitative research utilizes semi-structured interviews with a sample of expert witnesses in cases involving ASD, analyzed using a grounded-theory constant comparative analytic approach. Data reveal that experts appear to view their roles in court as reconstructionists, educators, myth-dispellers, and most of all, communicators, actively using their testimony to fill these roles in cases. These results also allow for the development of a model that illustrates two areas that coalesce to affect how experts view their roles in court: (1) personal experiences of experts in cases in which they have been involved; and (2) influences outside experts' personal experiences, such as their general opinions or observations regarding ASD and its relationship to the criminal justice system.

Keywords

expert witness; autism; ASD; court; judgments; mental health

Introduction

In court proceedings, the role of the expert witness has been described as to enhance the accuracy of the fact-finding role of the judge or jury, assisting them in understanding complex knowledge that is outside the court's expertise (Freckelton, 2012; Freckelton, 2013a; Garb, 1992; Loftus, 1986; Melton, Petrila, Poythress, & Slobogin, 2007). The expert also assists attorneys in understanding the expert's area, so that attorneys can both ask appropriate questions to their own witnesses or during cross-examination, as well as so they can argue the case to the judge or jury (Auxier, 1989).

If expert evidence is allowed in court by the judge, the expert's role is achieved by giving verbal testimony or submitting written reports to the court (Gould, Martindale, Tippins, &

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Wittman, 2011). In the United States (U.S.), courts in the large majority of states use either the Frye or Daubert standards to test for whether evidence should be admitted in court. Trial judges use the Daubert standard to evaluate expert evidence based on validity, reliability (error rates), methodological soundness, and relevance of the expert evidence to assist the fact finders; whether relevant concepts related to the potentially admitted evidence have been peer reviewed, tested, and are overall accepted by the relevant intellectual community is also considered (Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993). For expert evidence to meet the Frye standard, the evidence must be interpreted by the court as “generally accepted” as sound and reliable by the intellectual community to which the evidence is pertinent (Frye v. United States, 1923).

Expert witnesses are hired by opposing parties. There have been previous concerns that some experts are ‘hired guns’ to present non-objective evidence in order to sway the factfinders to the argument of the prosecution or the defense (Edens et al, 2012). Yet the role of the expert is not to advocate for either party, but to be an impartial and independent actor and educator of the court about the case and subject matter at hand (Auxier, 1989). Thus, the role of the expert is to inform and educate jurors and judges who may have no exposure to, knowledge, or background in the expert’s area in their fact finding roles (Auxier, 1989; Brodsky, Griffin, & Cramer, 2010). As one trial judge wrote, ‘the expert is acting as a teacher to the jury and the judge-the students’ (Weinstein, 1999, p. 356).

The role of an expert witness can be especially difficult for individuals, such as psychiatrists, psychologists, or social workers, who may assist courts in cases involving individuals with mental disorders, developmental disorders or disabilities, or involving mental health evidence (Melton, Petrila, Poythress, & Slobogin, 2007). Mental health evidence can involve psychological tests or evaluations or descriptions of how a mental disorder or developmental disability may be related to alleged criminal actions for which an individual is on trial; this evidence is often essential to addressing certain legal issues, such as custody issues, emotional damages, competency, and criminal culpability (Edens et al., 2012; Freckelton, 2013a). Yet, the presentation of mental health evidence can be challenging for the expert witness. For example, in criminal cases, mental health experts often become *reconstructionists*, having to retroactively assess and discuss how an individual’s disorder or disability possibly contributed to the alleged criminal behavior on trial (Freckelton, 2012).

Further, another especially difficult challenge for experts when presenting mental health evidence to assist the court in criminal cases is that many mental disorders and actions related to developmental disabilities are *episodic*, meaning that the presentation of symptoms can change depending on the time, situation, or stimulus. Some persons with certain disorders or disabilities exhibit criminal behavior in association with their symptoms, such as Attention Deficit Hyperactivity Disorder or Schizophrenia (Lamb, Weinberger, & Gross, 2004). In some cases, this nature of the offending behavior can make it very difficult for an expert witness to effectively communicate the complexities of person’s symptoms to a judge or jury in order to make them fully understand that the presence of a stimulus or situation in the past may have resulted in the presentation of certain symptoms, as well as subsequent criminal behavior, that may not be presently observable in court (Freckelton, 2012). One forensic psychologist, who often serves as an expert witness in trials involving

mental health evidence, has commented that he views his role ‘as the intermediary between a knowledge base and lay legal systems that need to be educated in order to make an informed decision’ (Targum & Ebert, 2012) about a defendant with a mental or developmental disorder.

Family law cases, such as custody or guardianship cases, are also often challenging for mental health experts, frequently balancing two jobs. First, they must review records, conduct evaluations, and interviews with both the child, or the individual who will be under legal guardianship, as well as interview the potential custodian or guardian. Second, whether it is the child, individual who will be under legal guardianship, or the potential custodian that may be diagnosed with a mental disorder or exhibit a developmental disability, the mental health expert must factor in how the individual’s diagnosis is relevant or important to the case, such as whether an individual under guardianship might be most successful in one environment or another because of his or her diagnosis (Shuman, 2002).

The role of the expert witness, including what he or she chooses to present in court and in what way he or she chooses to inform and educate the court, likely differs depending on the case and the specific mental health evidence that an expert is attempting to assist the court in understanding. Yet, virtually nothing has been written about how experts approach their roles in different cases involving individuals with specific mental disorders or developmental disabilities. Thus, this paper focuses specifically on examining the role of the expert witness in cases involving a specific spectrum of neurodevelopmental disorders with legal relevance: autism spectrum disorder (ASD).

Although there is no data concerning cases in the U.S., the number of criminal and family law cases involving ASD, especially high functioning autism (HFA), has increased in recent years in several jurisdictions, including Australia (Freckelton, 2013a; Freckelton & List, 2009). The fact that a defendant in a criminal case or an individual involved in family law cases, such as custody cases, has ASD can be exceedingly relevant to case proceedings and the justice process. The key concept that is often the heart of legal matters involving ASD is that individuals with ASD often ‘experience and interact with the world in a distinctively different way than do others’ (Freckelton, 2012, p. 374). Individuals with ASD exhibit impairments to social behavior, including understanding and misreading body language, facial expressions and verbal cues, difficulty with emotional facets of social interaction, extreme focus on routine or specific interests, and susceptibility to anxious and impulsive behaviors, which can sometimes result in aggression when faced with new or unfamiliar stimuli, environments, or when routines are disrupted (Mayes, 2003).

Some individuals with ASD exhibit criminal behavior in association with these symptoms of their disorders (King, & Murphy, 2014). As such, crimes can sometimes typically fall into predictable classifications of criminal conduct, such as reactive physical violence when anxious or faced with new environments, sexual misconduct and stalking when misunderstanding social interactions, arson, and computer offenses (Freckelton, 2011). In many cases, defendants with ASD are oblivious to negative consequences that may have arisen from their actions and are not sure why they are being criminally charged for their behavior (Freckelton, 2011). Additionally, the personal characteristics of accused persons

with ASD, such as flat verbal or facial affect or apparent lack of interest in court proceedings, can sometimes be misunderstood by the court as an individual lacking remorse for his or her criminal behavior (Browning & Caulfield, 2011). In family law, most notably custody and guardianship hearings, an individual's ASD is often an important aspect of parenting or guardianship plans. If a parent or guardian has ASD, the court must take into account how the disorder and its symptoms might affect an individual's ability to take care of the child or individual under guardianship. Conversely, if the child or individual who will be under legal guardianship has ASD, the court must take the disorder into account when determining whether the parent, custodian, or potential guardian has the appropriate resources or will provide the appropriate environment to take care of a child or individual with ASD (Rappaport, Kanter, & Anast, 2016).

As ASD can have immense legal relevance, courts are often tasked with assessing how and if ASD should be factored into case proceedings. For example, in criminal cases, courts are charged with identifying whether the symptoms of ASD might have played a causal or contributory role in the criminal action for which the accused is on trial (Freckelton, 2013a). Yet, research and recent court decisions have shown that judges and jurors themselves often do not have the knowledge or background to properly assess an individual diagnosed with ASD and whether his or her symptoms may be related to the committed crime (Berryessa, 2014a; Freckelton and List, 2009), leading to questions regarding the fairness of decisions on procedural issues (Freckelton, 2013b). Although ASD has largely solicited prosocial perceptions amongst the public (Payne & Wood, 2016), misconceptions and myths regarding autism are still exceedingly prevalent within society and its views towards these disorders, such as the relationship between autism and violence (Browning & Caulfield, 2011; Flood, Bulgrin, & Morgan, 2013). Judges and jurors may very well rely on common misperceptions and preconceived notions of ASD, which could potentially lead to unjust outcomes for individuals with ASD, such as lengthy prison sentences, when crimes appear bizarre or dangerous or when individuals appear to lack remorse (Kristiansson & Sorman, 2008; Taylor, Mesibov, & Debbaudt, 2009).

Thus, understanding the true nature of ASD and its symptoms, rather than relying on potentially inaccurate preconceived notions about ASD, is fundamentally important for judges and jurors in trials involving defendants with the disorder. Therefore, expert insights into the nature of ASD and its symptomology is often needed and significant (Freckelton, 2012; Freckelton & List 2009). The ability of the court to assess whether ASD and its symptomology should be factored into criminal defenses, sentencing submissions, or child custody decisions requires specialized expert evidence and opinions from mental health professionals who deeply understand ASD, its symptoms, and their potential relevance to the case at hand (Freckelton, 2013a). This expert assistance may also include communicating information on the neuroscientific and genetic influences to the etiology of ASD; Weiss (2001) writes that neuroscientific, genetic and other behavioral scientific expert evidence and information on ASD might help juries and judges to better consider the cases of individuals with ASD, especially surrounding degrees of blameworthiness among diagnosed individuals. Thus, expert witnesses in ASD cases often must act as the roles of *communicators*, educating the court on the legal aspects of ASD and distinctive ways in which the symptoms of ASD affect behavior and daily life.

Further, in criminal cases, experts must also often act as *myth-dispellers*, attempting to dispel inaccurate misconceptions about ASD and its symptoms (Freckelton, 2013a). Indeed, Freckelton (2013a) writes that there are many examples of cases in which courts have been successfully educated by expert witnesses on ASD, resulting in more informed case outcomes that have properly taken into account the disorder and potential therapeutic considerations. Yet there is still a mounting necessity for the expertise of mental health professionals to assist courts in making decisions that are fully informed by expert opinions relating to the complexities of ASD (Freckelton, 2013a).

Although there is this limited general literature on expert witnesses and their roles in cases involving ASD, what does exist comes from outside, academic perspectives. There is no literature on how the experts themselves perceive and approach their roles as experts in cases involving ASD, including whether they view and understand their roles in the ways that the existing literature has characterized them. For example, do experts perceive of themselves as *reconstructionists*, *educators*, *communicators*, or *myth-dispellers*, and do they actively use their testimony and expertise to fill these roles? If so, what factors have influenced their choices to take on these roles? Further, do experts believe that conveying the genetic influences to ASD is relevant or important to the court?

Knowledge on how expert witnesses perceive and approach their roles as experts in cases involving ASD, as well as what factors influence how and what experts choose to present on ASD, is imperative. Since expert assistance in court on these issues appears to be impactful on how courts make decisions in ASD cases, expert evidence and testimony are crucial factors in assuring appropriate and just criminal justice outcomes for individuals diagnosed with ASD. This research utilizes qualitative methods in an attempt to fill this gap in this literature. Based upon interview data with a sample of individuals in the U.S. who have served as expert witnesses in cases involving ASD, this paper discusses how experts appear to view their roles in cases involving ASD. A model illustrating the internal and external factors that appear to influence how experts perceive and approach these roles is presented.

Method

As the goal of this research was to examine how expert witnesses in ASD cases perceive their roles and the factors that appear to influence these perceptions, the author chose to utilize qualitative methods because their use focuses on individual perceptions to form an important overall picture or narrative of the topic being studied, emphasizing the value of portraying the reality of the area being examined (Hewitt-Taylor, 2001). The study of people's perceptions often can not be garnered using statistical analysis, which may reduce the experiences of individuals to numerical values; thus, the use of qualitative methods in this project, specifically using semi-structured interviews and a grounded theory analytical approach of which will be expanded upon later, sought to produce 'rich' and 'deep' data on expert witnesses in ASD cases that likely could not be garnered with quantitative methods (Hewitt-Taylor, 2001).

Participants

The author's sampling procedure was purposive to facilitate a constant-comparative approach to data analysis, derived from grounded theory methods; purposive sampling includes choosing a sample that has known common characteristics in order to study a population (Boeije 2002; Palys, 2008; Strauss & Corbin, 1998). As this research sought to study the perceptions of expert witnesses who have been involved in ASD cases on their roles in these cases, the research sample consisted of nineteen individuals with varying backgrounds in mental health disciplines who have served as expert witnesses or have given expert testimony in cases or trials involving ASD in the U.S.

In order to recruit this sample, the author identified potential participants who fit this description using sixteen web-based, subscription free expert witness directories and databases (Courtroom Insight, Expert Witness Network, ALM Expert, Experts.com, JurisPro Expert, Witness Directory, HG Experts, FindLaw, Rominger Legal, National Directory of Expert Witnesses, ExpertLaw, Expert4Law, ExpertPages, ExpertWitness.com, SeakExperts, FindLaw, LexVisio) using the search terms 'autism,' 'Autism Spectrum Disorder,' and 'Asperger's' within these databases. These databases were used to procure the sample because they are the types of convenient resources (as the email addresses or websites of potential expert witnesses are publically available in these databases) that are often utilized by attorneys, judges or other criminal justice actors to find an expert with knowledge or qualifications in a specific area (Dozier & Jackson, 2005).

Fifty-one individuals listed in these databases reported that they had expertise and experience as experts in legal matters involving ASD. All experts identified reported that they had multiple specialties and case experience with several mental disorders and developmental disabilities. These databases provided publically available email addresses or website links, which subsequently provided email addresses, for each potential participant. All fifty-one individuals were contacted via email between one and three times in May and June 2015, which included a recruitment letter detailing the project and offering a \$20 Amazon gift card as a token of appreciation for taking part in the interview. Nineteen individuals agreed to participate and were subsequently interviewed, three individuals initially agreed to participate but the author was ultimately unable to secure their participation, ten individuals declined, and nineteen individuals did not respond to the invitation. The nineteen individuals who were interviewed received \$20 Amazon gift cards via email for their time immediately following the interviews.

Full demographics for participants are found in Table 1. Participants included fifteen men and four women from twelve states in the United States: five from California, three from Pennsylvania, two from Texas, and one participant each from Florida, Mississippi, Michigan, Rhode Island, New Jersey, Minnesota, Connecticut, Wisconsin, and Massachusetts. Ten respondents had doctorates in four different disciplines (criminology, clinical psychology, educational psychology, educational sociology), six individuals were medical doctors with two different specialties (pediatrics, psychiatry), and three participants had Masters degrees in three different areas (a listing of these specialties is included in Table 1). For the sixteen participants that reported their years active in their field, the average was 28.06 years; three participants did not report their years active in their field. The frequencies

of the number of ASD cases and the types of cases for which participants have served as expert witnesses are also included in Table 1, as well as the party (prosecution, defense, or both) for which the experts on criminal cases involving ASD have served.

Quamatiye Interviews

The author developed a semi-structured interview protocol, drawing on the author's previous research on legal actors' perceptions and experiences with accused individuals with ASD (Berryessa, 2014a; Berryessa, 2014b; Berryessa, Milner, Garrison, & Cho, 2015), and a thorough literature review on ASD in the legal system. This semi-structured approach allowed me the opportunity to identify new ways of understanding and perceiving different areas and concepts during the interview process (Bernard, 2012) and allowed participants to discuss issues not explicitly addressed in the interview protocol at their discretion. It also allowed me to follow-up on questions in areas where experts had a breadth of experiences or opinions (Bernard, 2012). The full interview protocol is available upon request.

The interview protocol covered the following five broad topics: (1) experts' educational background, disciplinary experience, and years in the field; (2) experts' past experiences as experts in cases in the criminal justice system involving ASD; (3) experts' views of ASD in the criminal justice system more broadly; (4) experts' experiences with and perceptions of the genetics of ASD in the criminal justice system; and (5) experts' perceptions of media portrayals of ASD, both generally and in relation to criminal offending.

Regarding the fourth area of the interview protocol, it is important to note that the author's previous research on potential juror and judges' perceptions of and experiences with defendants with ASD touched on their views of the genetics of ASD specifically, rather than the neuroscientific or other biological influences to ASD (Berryessa, 2014a; Berryessa, Milner, Garrison, & Cho, 2015). For this reason, and as previous literature has noted that expert evidence on the genetic and other biological influences to ASD might help juries and judges to better consider the cases of individuals with the disorder (Weiss, 2001), the author also chose to ask experts about their views of the genetics of ASD.

Interviews were conducted between May 2015 and July 2015. All interviews were conducted by telephone at an agreed upon time and date. All participants were given informed consent prior to the start of the interview, as well as an information sheet with contact information for the researcher and the University of Pennsylvania Institutional Review Board. Interviews ranged from 22 to 123 minutes, with a mean length of around 45 minutes. Interviews were digitally recorded and transcribed verbatim following the interviews. After an initial nine interviews, the author preliminarily analyzed the data to identify emerging themes in the data and then conducted ten additional interviews with participants to further explore, contextualize, and organize these themes until conceptual saturation was met.

Data Analysis

A constant-comparative analytic approach, derived from grounded theory, was utilized for this analysis (Boeije, 2002; Strauss & Corbin, 1998). Through this approach, the nature of each participant's opinions and perceptions are inductively captured, recalled, and presented

in relation to the research questions addressed in the study (Hewitt-Taylor, 2001). Thus, this analytic method was chosen in order to identify common themes, or categories, that emerged from these interviews in order to promote understanding of each individual's experiences and perceptions of their roles as expert witnesses. This method is most valuable when the topics being studied are insufficiently understood (Cobb & Forbes, 2002), as in this case. Since there is no existing literature on experts' first hand perspectives and perceptions of their roles and approaches in cases involving ASD, the author chose to rely on the emergence of themes and meaning from the interviews themselves during the coding process, rather than rely on deductive reasoning, in order to best and most faithfully represent the data and theory developed from the data.

Analysis, using NVivo 14 qualitative coding software, was conducted in three stages, as described by Strauss and Corbin (1998). First, an open coding of nine interviews established preliminary themes. As the ten additional interviews were conducted, frequent comparisons of the data were made and data was repeatedly recoded using the preliminary themes, adding, eliminating, or collapsing themes when needed, in order to form these themes into categories. As open coding continued, it became obvious that these preliminary themes fit into categories that described the personal experiences and general opinions of interviewed experts that have shaped their perceptions of their roles as expert witnesses in ASD cases. These categories were developed during the second stage of analysis, known as axial coding, in which connections between a category and its codes are established and organized into hierarchical categories (Strauss & Corbin, 1998).

In the third stage of this type of analysis, called selective coding, all of the data is axial coding to the core categories in order to answer the research questions (Strauss & Corbin, 1998). The development of the core categories and its links to all component categories result in the grounded theory (Strauss & Corbin, 1998), which in this case is a model of how the personal experiences and general opinions of experts influence how they perceive and approach their roles as expert witnesses. Further, it is important to note that theoretical saturation of all categories was evident following analysis of all nineteen interviews, which has been discussed in the literature as when no new themes or changes to the coding scheme were observed or warranted by the author during and after analysis (Guest, Bunce, & Johnson, 2006).

Finally, with regards to coding reliability, a random sample of one-third (six) of the interviews was coded by a second independent coder, after all data had been coded by a single coder, in order to validate the coding scheme and better ensure the trustworthiness of the data presented here. An interrater reliability rating of .85 was achieved, which represents excellent interrater reliability (Banerjee, Capozzoli, McSweeney, & Sinha, 1999). All coding discrepancies were resolved by coders through discussion.

Results

Findings from the interviews encompassed two core categories, then organized by axial categories and themes, that emerged from the three-stage analysis. This hierarchical organization of findings is presented in Table 2.

The first core category that emerged is *internal*, which specifically focuses on internal influences that have shaped experts' perceptions of their roles, such as personal experiences in cases as an expert witness. Two axial categories, and their codes, within this core are (1) *personal reactions to cases with accused persons with autism* (causes to crime, sympathy, wrong diagnosis) and (2) *using expertise to communicate* (explain symptoms and education of lay understandings). The second core category that emerged is *external*, which specifically focuses on external influences on experts' perceptions of their roles, such as their observations of how knowledge of ASD may affect the criminal justice system or overall concerns they have about ASD in the criminal justice system. Three axial categories, and their codes, within this core are (1) *effects of knowledge of autism in the criminal justice system* (positive-mitigation, positive-criminal justice actors better understand what's going on and what to do, negative-aggravate, negative-'getting off'), (2) *concerns about autism in the criminal justice system* (lack of knowledge and understanding of criminal justice actors, ASD and violence, criminal justice system not equipped), and (3) *genetics of autism relevant?* (medical model, mitigation).

The author has attempted to illustrate the various themes within each axial category in each core category with quotes that provide the clearest expression of each theme and to indicate different participants' perspectives. The author has also attempted to faithfully characterize the views and perceptions of participants to the best of the author's ability. In cases in which it is necessary, quotations are edited in order to anonymize judges' identities (e.g. removing names or specific places), which is a common practice in qualitative research (Kaiser, 2009). Finally, the disciplinary background, years in the field, frequencies of the number of ASD cases, and the party for which experts have served in criminal cases involving ASD did not appear to result in any marked differences concerning experts' perceptions of their roles. Instances in which experts' past experiences regarding the types of cases for which they have served as expert witnesses resulted in different views are noted.

Internal

Personal Reactions to Cases Involving Autism—All participants were asked to reflect on their personal reactions to cases involving individuals with ASD. Individuals were asked to draw on their personal experiences over their years in the field regarding cases for which they have served as experts. Experts' reflections on their reactions to cases involving ASD fell into three themes: *causes to crime*, *sympathy*, and *wrong diagnosis*. Experts in criminal cases specifically spoke to *causes to crime*, while both experts with experience in criminal cases and custody cases spoke to *sympathy* and *wrong diagnosis*.

Causes to Crime: Experts in criminal cases discussed that their initial reactions to cases involving ASD for which they have been asked to serve as an expert witness has often been curiosity, and sometimes apprehension, about whether the disorder influenced or 'caused' the commission of the criminal act by the accused individual diagnosed with an ASD: 'My role is to find out if autism was present and then... do I believe that it was related to the crimes or the type of crime that was committed' (Interview 17). Many experts described how ASD has frequently been a contributing factor to their criminal cases, describing their reactions to their previous cases:

I figure that there's not a for sure chance but a reasonable chance that there's something about this person's development that has been a causative factor in the crime or at least related to it. And I'm sure there are people with autism who are antisocial also, so they commit crimes willfully. My gut reaction is I bet there's something real haywire with their deficits in certain areas that are involved with the crime (Interview 9).

Although experts did caution that defendants with ASD are 'not necessarily representative of all the other folks with these problems that did not commit crimes,' they generally expressed that they are 'sensitized... to the possibility of a causal relationship' (Interview 5) because of the nature of their work; it often is the first place where experts start when they are asked to potentially serve as an expert witness on a case involving a person with ASD: 'I don't discount [the diagnosis], it's something that needs to be ruled out as a primary factor' (Interview 5).

Generally, experts described the involvement of ASD in a criminal case as a type of 'alarm bell' that a case may require a deeper level of understanding compared to other types of cases, but not to allow the presence of ASD to lead the expert to jump to conclusions about why a crime has occurred: It alerts me to the need to go deeper into the nature of the behavior and whether it's due to the problem or not. Because someone has a disability doesn't mean the disability caused the behavior' (Interview 10). Other experts, echoing similar sentiments, also discussed distinctions between the severity of ASD, meaning lower functioning autism (LFA), and its potential influence on alleged criminal behavior:

If they're pretty severely affected and they do something really impulsive or, you know, they do something they believe is protecting themselves, then I think you can look at it in a lot more compassionate way; and say 'Hey, this wasn't an act that makes them a bad person they just did it because this impulsivity is part of their underlying disorder' (Interview 1).

Sympathy: Experts also reflected on reactions of sympathy in their experiences as expert witnesses in cases involving ASD. These reflections focused on sympathy for the individuals with ASD involved in the justice system (either as an accused offender with ASD or as an individual with ASD at the center of a custody hearing) because the individual may not 'understand what autism is and how that could have impacted the circumstances of the crime' (Interview 17), why he or she is involved in the justice system, or how he or she is supposed to 'deal with' (Interview 14) his or her disorder: 'I usually feel sad and that's usually the gut feeling, and I'm really not sure whether they have anyone on their side to work with them to demonstrate what they are suffering from. Basically how... what they need may not be available' (Interview 14).

Reflections' on sympathy for individuals with ASD also spoke to worries that people in the criminal justice system may not have the background or knowledge to understand the disorder, how it is potentially involved in a case, and, at least in criminal cases, that the disorder could be influential in understanding why a crime has occurred: 'The first thing I think of is that I feel sort of sad and hope that people understand that the child may have been acting without good knowledge or understanding of his or her behavior' (Interview 15).

Wrong Diagnosis: Pulling from their personal experiences, experts with experience in criminal cases and custody cases reflected on the immediate apprehension about whether an individual actually has ASD or if an individual has been misdiagnosed when asked about their personal reactions to their cases involving individuals with ASD:

My first question is I wonder if this is somebody who really is autistic, cause especially with adolescents in older years someone may be diagnosed with autism but in fact maybe they have a psychotic disorder and so they're acting in an autistic fashion; similarly, someone may have autism but what's contributing to their behaviors may not be autism it may be something else, and there's a huge overlap between psychotic disorders and autistic features (Interview 12).

Similarly, many experts said that a defendant's autism could instead be 'a serious mental health problem that likely isn't developmental' (Interview 18). Several experts, specifically those who served on criminal cases, appeared to have had several experiences in which the expert was unsure of or disagreed with an individual's diagnosis with ASD when being brought on as an expert witness in a case, ultimately asking 'Is that the correct diagnosis?' (Interview 3). Many experts said that a person's ASD could instead be 'a serious mental health problem that likely isn't developmental' (Interview 18).

Misdiagnosis was a sensitive subject for experts, with several expressing that a misdiagnosis can completely change one's trajectory in the criminal justice system and it is their job often to make sure that a correct diagnosis with ASD has been made:

When you're misdiagnosed with a mental health disorder in the criminal justice system is one of the most tragic and avoidable miscarriages of justice that I can think of. Furthermore, a correct diagnosis leads to much better outcomes if recidivism is of any interest to anyone, and if retribution is their sole motivation even that could be enhanced in the understanding of a mental health, of a correct mental health diagnosis (Interview 3)

Using Expertise to Communicate—Participants were asked about the nature and objectives of their testimony and expertise in cases of which they have been involved as expert witnesses. Experts expressed that the main objective of their testimony and expertise has been to *communicate* information about ASD to the court. When asked about the nature and purposes of this communication, experts' reflections fell into two themes: *explain symptoms* and *education of lay understandings*.

Explain Symptoms: Overall, experts described their efforts to communicate information about ASD's symptoms to the court in their previous case experiences. Some experts discussed communicating the disorder's symptoms in custody cases in order to establish whether an individual 'has the ability to make important financial or mathematical decisions on their own' (Interview 1) and communicating how the symptoms of the disorder contribute to the 'severity of [individuals'] autism disorder and their ability to make a decision relative to an important aspect of their life' (Interview 1). Experts also said that they communicate the disorder's symptoms to the court in custody cases in order to establish what might be the best environment for an individual with ASD because of the nature of his or her symptoms;

when choosing a successful environment for individuals with ASD, one must know ‘what are [individuals’ with ASD] intellect, what are their language skills, what are their social skills, sensory issues involved... nutritional issues...behavior issues, you know, aggressive behaviors, anxiety, attention concerns’ (Interview 15) in order to make custody decisions.

For criminal cases, experts reflected on communicating the disorder’s symptoms to the court in order to illuminate if and how an accused offender’s criminal behavior may have been related to the symptomatic presentation of his or her disorder and whether the symptoms of the disorder may make it more likely that an individual is ‘going to do it again’ (Interview 11). Experts described how they have used their testimony to communicate how the symptoms of ‘autism affected the offense conduct and how treatment is a much more appropriate and viable option’ compared to traditional punishments (Interview 18). One expert noted the following about a defendant with ASD:

Sometimes he doesn’t have the ability to comprehend the fact that what he was doing was inappropriate. Folks with autism sometimes can be very good at doing rote tasks, but when it comes to more abstract thinking and generalization, high level thinking, and also issues pertaining to social interactions, that’s where a person could seriously run into difficulty in that they might have read or heard that there are certain things that they shouldn’t do, that would be illegal to do, but it doesn’t mean in a certain situation that they necessarily have the social judgment to make a good decision (Interview 6).

By far, the symptom of ASD that experts said that they cover and discuss most in court is *social impairments*. Experts across all types of criminal cases stressed that communicating how social impairments might have contributed to the alleged criminal behavior in question is by far the most imperative aspect of their previous expertise and testimony in cases of which they have been involved:

What’s the most significant disability for a person with autism? Social constructs. So they are totally mind blind, if you will, to this notion of right versus wrong, they just see that as being against them, and against the laws of nature if you will. So that puts them at a huge disadvantage especially in court because they come across as arrogant, rude, obnoxious, and so forth because they are absolutely correct, in their view of things (Interview 8).

Experts highlighted the misreading of ‘social cues or social situations’ that can lead individuals to offending behavior, even though they may not ‘understand how they come into these conflicts with the law’ (Interview 9). This was especially highlighted for experts when they were discussing their involvement in cases involving person-on-person offenses, such as assaults and sexual offenses:

In stalking cases... I thought in the person’s behavior there was no real attempt to cause someone any harm in stalking. It was because their social interactional skills were so poor and they had such deficits; they were doing these crimes really unintentionally. They didn’t know how to more intentionally approach these females you know to meet them or interact with them. The social skills were just so poor (Interview 9).

Once again, experts who had served on custody cases specifically discussed communicating the social impairments of an individual with ASD to the court in order to best establish an appropriate environment for that individual because of the nature of his or her social impairments.

Education of Lay Understandings: Experts described their efforts to communicate information about the disorder in order to educate fact finders, such as judges and jurors, about ASD and how it should be potentially influential with regards to the case at hand. Experts who had been involved in custody cases discussed how they attempt to educate judges about the complexities of an individual's ASD and what might be the best environment or situation for an individual because of the nature of their ASD:

You're typically just explaining to the judge why you feel like this person - why their judgment is impaired or why their decision-making is impaired enough that they need someone else to help them run their affairs. So it's really just a discussion with [the judge] telling them, you know, what you believe sort of the level of what this person's dysfunction is and why then it makes it hard for them to take care of things on their own... For medical people it's easier to understand some of these dynamics, but for laypeople I think that they don't understand them very well. So I kind of feel like my job is to better explain the dynamics of what's going on with the person in that circumstance. You know to a person who doesn't understand that medically (Interview 1).

For those who have been involved in criminal cases, experts stressed that you got to educate the court and the courts have not been educated enough (Interview 8) about ASD and how it should be potentially taken into account during the fact-finding process and when making decisions on procedural issues: 'I think in my experience, part of it is educating, whether it's a jury or a judge or the attorneys that I'm working with about what autism really is and how we really diagnose it and what does it mean for people in terms of their decision making processes' (Interview 12). Experts especially highlighted communicating information about the disorder in order to educate fact finders because understanding the nature of ASD is often integral to securing the best possible outcomes for accused persons in ASD cases:

In my experience... the case can really swing one way or the other depending on how much good education that expert can give to the attorneys and the judge in a case about autism and what's a problem and what kind of deficits people have and how it might play out in their case and what is the best way to approach it other than an appeal to different types of outcomes. I think the education is really a key to helping the legal folk figure these cases out (Interview 9).

Finally, experts in general recognized the power that comes with their roles to educate the court:

One thing I love about being an expert witness... is when I walk into the room, unless the other witness or... some other psychologist or mental health professional at a high level is there... although the judges and the lawyers are bright, well educated, and well informed... I know more than anybody in the room about what I

know. I think I appreciate and understand things in a much more sophisticated way [about ASD] than anyone else [in the courtroom] (Interview 4).

External

Effects of Knowledge of Autism, in the Criminal Justice System—All

participants were asked to reflect about how knowing that an individual or accused offender has ASD may result in different consequences in the criminal justice system; although not specifically instructed, experts answered based upon their general observations and opinions, rather than reflections specifically based on their past case experiences as an expert witness. Experts' reflections fell into two camps: *positive* effects of knowledge of ASD in the criminal justice system (*mitigation, criminal justice actors better understand what's going on and what to do*) and *negative* effects of knowledge of ASD in the criminal justice system (*aggravate, 'getting off'*).

Positive: The large majority of experts expressed that knowledge of ASD in the criminal justice system would most likely result in effects that are entirely *positive* for the accused. These *positive* effects fell into two areas: *mitigation* and *criminal justice actors better understand what's going on and what to do*.

Mitigation: Experts described the positive effects of knowing that a defendant has ASD with respect to mitigation in criminal trials, specifically related to soliciting sympathy from the court and reducing moral blameworthiness:

In some cases, [ASD] garners more sympathy, or even if it's not sympathy but more of a 'oh well that person really didn't know what they were doing.' I think some people tend to look at that and it would lead to a lower level of culpability in the public's eye so to speak or the layperson... I think it lets people off a little bit more in the public's eye (Interview 19).

Through this knowledge, experts described that judges or jurors who are aware that an individual has ASD may be likely to 'exert extra effort to see that a proper disposition is made for the person' (Interview 11) or more amenable to 'take [the disorder] into account and then have more tailored sentencing' (Interview 5), such as treatment or alternative sentencing options rather than prison or more traditional sentencing.

Criminal Justice Actors Better Understand What's Going On and What to Do: Experts reflected on the positive effects of the court knowing that an individual has ASD with respect to legal actors being better able to understand the potential complexities of the case to ensure more informed decisions and better outcomes:

I think if someone is autistic, it's going to be very hard to understand their behaviors, their functioning in the courtroom and their communication. It helps to know that they are autistic and to see that explained - the manner of speaking, some repetitive behaviors - that might be observed in a courtroom setting, it's as simple as that. I think if you aren't aware that an individual is autistic, people would think that this is someone who is behaving in a particular way, and not sure why. It might be misunderstood as purposeful (Interview 12).

Through this knowledge, the legal system may better ‘appreciate the fact that these [individuals] need to be treated differently in the system and that the charges brought against them or the way they are prosecuted needs to be different’ (Interview 12) from other individuals or accused offenders, ultimately securing the best possible outcome for the individual or accused offender with ASD. Experts believed that it is their role and duty to aid legal actors to better understand the nature of the disorder and that ‘once an expert comes in and explains either in written report or in testimony about what autism is... it sheds a whole lot of light on the case’ (Interview 9).

Negative: Some experts expressed that, in the criminal justice, knowing that a defendant has ASD may result in effects that are *negative* for the accused, but these sentiments were far less common than experts’ reflections on positive effects of the court knowing that the accused offender has the disorder. These *negative* effects fell into two areas: *aggravate* and ‘*getting off*.’

Aggravate: Experts reflected on the negative effects of knowing that an individual in a criminal case has ASD with respect to the disorder potentially being an aggravating factor, specifically worrying that knowledge that an accused offender has ASD may make the court incorrectly believe that an individual could be dangerous in the future:

Well I think it’s a harder thing not to hide. I think it affects... I’m sure jurors look at it and think, you know, that this person would be more likely to commit a violent crime or do something violent, cause that’s the reception that’s in the media. It’s just the perception that people are dangerous and harmful and do that thing. So I think when a jury hears that somebody has a mental health issue or has autism, their immediate context is, ‘oh, well they’re more likely to have committed a violent act,’ while actually the opposite is true (Interview 1).

‘Getting Off’: Experts described the negative effects of knowing that a defendant in a criminal case has ASD in terms of judges or jurors believing that an accused offender with ASD may use the disorder to ‘get off’ or out of criminal charges, generally echoing concerns that these views may arise from misunderstandings of the legal relevance of ASD by the court:

I think that if the court becomes aware of a person who has [ASD] that would affect their judgment or temper, but it might not mitigate the accountability of what occurs, but I think... the public has kind of had it with the notion that whether there’s a disability or not, if their behavior was physically hurtful to other individuals that the disability should not be allowed as an ‘excuse’ so that that person is allowed to ‘get off.’ So I think there’s that concern (Interview 6).

Concerns about Autism in the Criminal Justice System—Participants were asked to generally consider their concerns about individuals with ASD in the criminal justice system. Although not specifically instructed, experts’ answers were once based upon their general observations and opinions, rather than reflections specifically based on their past case experiences as expert witnesses. Experts’ reflections fell into three areas: *lack of*

knowledge and understanding of criminal justice actors, autism and violence, and criminal justice system not equipped.

Lack of Knowledge and Understanding of Criminal Justice Actors: Similar to their previously discussed sentiments, experts described their concerns about the lack of knowledge and understanding of legal actors on ASD and the complexities of the disorder and its symptoms: 'I don't know how well attorneys understand the disorder and the spectrum and the different aspects of [ASD] and the impact it has... I think that the juries and the judges often don't understand it so they really need a good explanation in laymen's terms of the deficit issues' (Interview 15). Experts felt that often 'neither lawyers nor judges have any type of training in psychological development or mental and it shows' and that often, 'they don't have any idea what they're doing' in cases involving ASD (Interview 3). Further, experts expressed concerns that the lack of knowledge and understanding of legal actors regarding ASD may lead to unfair outcomes for individuals with ASD:

Well, I just think that they're poorly understood and that, for most people, if they take something or shoplift there may have been some intentions behind it, but somebody with autism, they might not have even realized what they were doing. But there's still lumped in with this offender who's done something and maybe the court doesn't want to hear about it. So I don't really care why they did it, but they did it, so they have to pay the consequences. So if I would hear about somebody in the criminal justice system with autism I would automatically think that they're probably not going to be treated fairly (Interview 2).

Experts described how these concerns contribute to the necessity for experts to 'educate the audience' (Interview 14) on the nature of ASD, which is similar with regards to how experts described how they use their testimony and expert opinion to educate the court on the disorder in order to aid legal actors to better understand the nature and symptoms of ASD

Autism and Violence: Experts' expressed concerns that the public may falsely assume that there is a relationship between ASD and violence because of sensationalized media portrayals, negatively affecting the views of fact finders and potentially affecting decisions on procedural issues for accused offenders with ASD: 'I think that there's this perception that people who have autism are more violent, or have the potential to be more violent, because of the way the media portrays it' (Interview 1). Due to these media portrayals, experts believed that fact finders may conclude that ASD is an aggravating factor in sentencing and that an individual with ASD is inherently more dangerous or violent because he or she has the disorder. Thus, experts highlighted that 'it's a bias that should be addressed' (Interview 1) in court by the insights and testimony of experts. The Sandy Hook shooting was the predominant media portrayal discussed by the experts as potentially influential to the perceptions of judges, jurors, or attorneys:

There's no evidence that [Adam Lanza] was or was not on the autism spectrum, no real evidence about Asperger's. Having said that, you know, he was portrayed as a person having Asperger's or autism frequently in the press. And I think part of how he was portrayed was that people with autism have poor coping skills and that they

don't know how to respond physically. I think the way that [Adam Lanza] was represented did not serve the autism community well (Interview 7).

Criminal Justice System Not Equipped: Overall, experts expressed sincere concerns that the criminal justice system is not equipped to properly or effectively handle individuals or accused offenders with ASD:

The criminal justice system is not set up to identify mental health issues in general and they're particularly not set up for autism spectrum disorders. There's almost a taboo in coupling autism spectrum with delinquency and crime. Part of the issue is that... when an autistic person turns adult, the child psychiatrists stop seeing them, but the adult psychiatrists who have never really treated a child with autism don't know how to treat him and so they are a very discriminated against population (Interview 10).

Experts urged for more action and advocacy through the criminal justice system in order to protect individuals from adverse outcomes, including through the use of expert testimony:

We need a fiercer lobby for autistic peoples in the criminal justice system through the law. We need more people to pay attention to the special needs that they have and to get more accurate diagnostic pictures of the people that are going to prison before they assign them to different populations, and then more conditions that are conducive to rehabilitate them, rather than making them more defensive, afraid, and worse. [The criminal justice system] is very threatening place for them and... I don't think they get the treatment that they really need (Interview 11).

Genetics of Autism Relevant?—Experts were asked about the ways regarding how and if the knowledge that ASD has genetic influences is relevant or influential to perceptions of the disorder in the criminal justice system; although not directly instructed, experts reflected on how the knowledge that ASD has genetic influences might be used beneficially in expert testimony in cases involving ASD. Reflections fell into two areas: *medical model* and *mitigation*.

Medical Model: Experts expressed that the knowledge that ASD has genetic influences may positively affect perceptions of fact finders in court about the origins and nature of the disorder, ultimately allowing for a "medical model" instead of a definition' (Interview 18) of ASD to be understood by the court:

I think when you can present something in terms of a medical model and show that there's a neurobiological basis for something, especially for something that's a disability that can be an 'invisible' disability so to speak, especially the less severe folks, that I think that can only help serve to work in the benefit of folks who are charged with crimes or are in contact with the justice system (Interview 19).

Experts discussed how highlighting the genetic, as well as other biological, influences to the disorder might influence fact finders to take testimony on ASD more seriously than without it:

What are the ramifications to the client entering the system of making known the genetic impact or the genetic causes of autism? Then the answer is it is vital. In my experience judges and juries and lay persons are extremely interested in the origins of these types of things, where they might not have been interested in all the intricacies of it an all that. When you can begin to show that there's a genetic component from within their family and you point to other people in the family that have this, they are much more likely to consider it a significant aspect in the trial, whatever the trial is (Interview 11).

Finally, experts also discussed how knowledge on the genetic, as well as other biological, influences to ASD might clarify and illuminate the true nature of an individual's symptoms:

If there's known genetic causes, there's brain development, there's medical issues like prematurity that may result in developmental disabilities... so all of these things magnify and make a stronger statement of how the brain is impaired in autism and how that could be responsible for them not understanding and becoming involved in the legal system, so yes I think having more knowledge and awareness and being allowed to enter that into the court and the legal system I think would be beneficial. I guess both for the public to understand and the court system (Interview 17).

Mitigation: Experts believed that the knowledge that ASD has genetic influences may lead fact finders to believe that the disorder mitigates the responsibility of a defendant with ASD, specifically that he or she is less blameworthy:

Something that is genetic isn't the person's fault, that they didn't choose their genes, and they didn't do it on purpose necessarily... In general, if people know what genetic predispositions are, you know, how heredity works, but when you inherit something that it's really not your fault. You can't be blamed for your genes; you didn't pick your parents (Interview 9).

Experts agreed that genetic expert evidence could be very influential because of its objective and 'irrefutable' nature:

You don't argue with the genetic stuff, the genetic stuff isn't an opinion... say, so look here, we have this genetic evidence of this and we have other family members who have it. So we begin to look at the client as more a victim, even though he may be defendant, and we begin to look at him as having been a victim and subject to a lot of trepidation and misery that a lot of people had to go to. The court tends to be more sympathetic then. So I think it's vital... Whenever we testify we're always looking for the best evidence, the evidence that's closest to irrefutable, that's it (Interview 11).

Discussion

Overall, the data provided by experts revealed participants' perceptions of their roles as expert witnesses in ASD cases and allow for the development of a model that illustrates several internal and external factors that appear to influence how experts perceive and

approach their roles as experts (see Figure 1). The data suggest that several of these internal and external factors are also influential on experts' views of *using their expertise to communicate* information about ASD to the court in order to educate jurors, judges, and attorneys about the complexities of the disorder and its symptoms, which itself then influences how experts approach and perceive their roles.

Concerning *internal* influences on experts' perceptions of their roles, it appears that their past case experiences have significantly affected how experts perceive and approach their roles as expert witnesses in ASD cases, as well as how and what they choose to present to the court (*Personal Reactions of Cases Involving Autism*). Participants described how their personal reactions to the ASD cases in which they have been involved in as expert witnesses have shaped their roles. For experts who have served on criminal cases, this included reflections regarding their curiosity and necessity as an expert to figure out whether the disorder in some way contributed to the 'cause' of the criminal act committed by an accused offender diagnosed with ASD. As criminal behavior can sometimes be associated with the symptoms of ASD (Browning & Caulfield, 2011) and one of the main tasks of the court in criminal cases involving defendants with ASD is to identify whether the disorder played a part in the commission of the alleged crime (Freckelton, 2013a), experts using their roles in an attempt to identify whether the disorder had a causal role in the committed criminal act speaks to previous literature on experts having to act as *reconstructionists* by retroactively assessing how a disorder possibly caused or contributed to the alleged criminal behavior on trial (Freckelton, 2013a).

Experts' reflections on reactions of sympathy for the individuals with ASD that they have encountered, specifically due to worries that people in the criminal justice system may not have the background or knowledge to understand the disorder or how a potential misdiagnosis could completely change an individual's trajectory in the criminal justice system, also seem to shape how participants approach their roles as expert witnesses. These reflections suggest experts' discomfort about how individuals with ASD may be treated in the criminal justice system, potentially due the fact that the limited knowledge of most judges and jurors on ASD and its legal relevance has previously raised questions on courts' abilities to issue fair decisions on procedural issues (Berryessa, 2014a; Freckelton, 2013a; Freckelton & List, 2009). Experts discussed that this limited knowledge highlights the necessity of their expertise and testimony in cases involving ASD.

Experts' reflections on being *reconstructionists* for the court regarding the potential causes of the committed crime as it relates to the symptoms of ASD, as well as experts' feelings of sympathy and apparent discomfort about the courts' limitations to effectively handle cases involving ASD because of its lack of knowledge or potential misdiagnoses, also appear to be impactful regarding the other aspect of *internal* influences on how experts perceive and approach their roles: *using expertise to communicate*. Participants, pondering the nature and purposes of their testimony and expertise in cases of which they have been involved, heavily stressed that the main objective of their expertise is to *communicate* information about the disorder to the court. This characterization of their roles as experts supports previous literature characterizing expert witnesses in cases involving ASD as *communicators* to the court (Freckelton, 2013a).

Participants portrayed their roles as *communicators* in two ways. First, expert witnesses provide information to the court on the symptoms of ASD, especially social impairments, and how they may affect how an individual interacts with the world and their potential legal relevance to the case at hand (e.g., in custody cases, how the symptoms of ASD might affect what environment is appropriate for an individual with ASD or, in criminal cases, how the symptoms of ASD might have played a causal role in a criminal action being committed. Second, expert witnesses educate fact finders in court on the complexities and nature of ASD by providing this information to the court on the disorder's symptoms. As a *communicator*, experts highlighted the importance and necessity of their role as an expert to educate the court in their fact-finding tasks, as the court most often has limited knowledge on these issues, in order to secure the best possible outcomes for defendants and individuals with ASD.

Experts' characterization of how they have acted as *communicators* in their previous case experiences also reinforces previous literature on the requirement of expert witnesses to act as *educators* of the court (Auxier, 1989; Brodsky, Griffin, & Cramer, 2010; Freckelton, 2012; Freckelton, 2013a Targum & Ebert, 2012; Weinstein, 1999). As an *educator*, experts must communicate the legal relevance of the symptomatology of ASD in order to edify the court to maximize positive or beneficial outcomes for individuals with ASD (Freckelton, 2013a). Thus, the role of the expert as an *educator* appears to go hand-in-hand with the role of the expert as a *communicator*, both of which appear to be influential aspects regarding how participants perceive of and approach their roles as expert witnesses in ASD cases.

Further, the notion of experts *using expertise to communicate* appears to be influenced by external factors as well. Participants, concerning external influences on experts' perceptions of their roles, first described their general opinions regarding how the criminal justice system knowing that an individual has ASD may result in positive or negative effects (*Effects of Knowledge of Autism in the Criminal Justice System*). On the positive side, experts described that knowledge of the disorder might mitigate perceptions of responsibility to the court, potentially resulting in judges or juries exerting extra effort to make sure that a fair decision is rendered with regards to procedural issues for these accused offenders, such as alternative or therapeutic sentencing options rather than more traditional sentencing. This sentiment aligns with previous literature describing how experts have successfully educated courts on ASD which has resulted in more informed case outcomes and potential therapeutic considerations in some cases (Freckelton, 2013a). Participants also said that knowledge of the disorder also aids criminal justice actors to better and fully understand the potential complexities of the case to ensure more informed decisions and better outcomes for the individual with ASD. Experts stressed that they were the ones that needed to provide this knowledge of ASD to the court to maximize positive outcomes, which is similar to how experts and previous literature describe how necessary it is for the expert to play the role of the *educator* for the court (Auxier, 1989; Weinstein, 1999; Brodsky, Griffin, & Cramer, 2010; Targum & Ebert, 2012; Freckelton, 2013a).

On the negative side, with regards to criminal cases, experts believed that knowledge that a defendant has ASD might aggravate attitudes of the court towards an individual's potential dangerousness or inability to treatability or result in the court believing that an attorney is

using the disorder in an attempt to get his or her client ‘off the hook.’ Experts appeared to be worried about the court adopting or holding these negative attitudes. These sentiments speak to the idea that experts may have to play the role of *myth-dispeller* about certain aspects of ASD, such as its relationship to dangerous behavior or its inability to be effectively treated, since there have been worries that judges and jurors may rely on misperceptions or preconceived notions of ASD, which may affect outcomes for individuals with ASD in the criminal justice system (Freckelton, 2013a; Kristiansson & Sorman, 2008; Taylor, Mesibov, & Debbaudt, 2009).

Experts’ perceptions of their roles also appeared to be influenced by their general concerns about individuals with ASD encountering the criminal justice system (*Concerns about Autism in the Criminal Justice System*), specifically surrounding many of the same themes that experts spoke to in other parts of the interview. Experts expressed worries about potential negative outcomes arising from the courts’ lack of knowledge and understanding of ASD and how the criminal justice system may not be equipped to properly or effectively handle individuals with ASD as it currently exists. These concerns once again echoed how necessary it is for the expert witness to play the role of the *educator* of the court in cases involving ASD (Auxier, 1989; Brodsky, Griffin, & Cramer, 2010; Freckelton, 2013a; Targum & Ebert, 2012; Weinstein, 1999) in order to result in more informed case outcomes that properly take into account the disorder and potential therapeutic considerations (Berryessa, 2014a; Freckelton, 2013a; Freckelton & List, 2009). Further, experts vocalized their worries about the court potentially subscribing to false notions surrounding the relationship between ASD and violence, which are largely spurred by the media, that may aggravate case outcomes in criminal matters. Once more, this speaks to the idea that the roles of experts include *myth-dispelling* in order to dismiss inaccurate misconceptions about ASD and its symptoms during fact-finding and when making procedural decisions (Freckelton, 2013a).

Although likely exerting their own independent effects on how experts perceive and approach their roles, these two aspects of *external* influences on experts’ perceptions of their roles (*Effects of Knowledge of Autism in the Criminal Justice System* and *Concerns about Autism in the Criminal Justice System*) also seem to be influential on the idea of experts *using their expertise to communicate* information about ASD to the court, as illustrated in Figure 1. As many of the same sentiments discussed by participants throughout the different parts of the interviews speak to playing the roles of *educators*, *myth-dispellers*, and *communicators* in court, experts are likely influenced through both internal and external factors. Experts are influenced by *internal* factors, including personal experiences, and *external* factors, regarding how and why the main objective of their testimony is to *communicate* information about the disorder to the court about the nature of the symptoms of ASD, how the disorder may be relevant to alleged criminal act or a case at hand, and in order to educate the fact finders of the court on ASD to secure more informed procedural decisions and therapeutic outcomes for individuals with ASD.

Finally, participants discussed how it may be beneficial for experts to convey knowledge on the genetic influences of ASD to the court, as well as how this knowledge may be relevant to the role of the expert, when asked to reflect on how and if the knowledge that ASD has

genetic influences might be relevant to court proceedings. This supports previous literature that has discussed how communicating information on genetic influences of ASD and its symptoms might potentially help juries and judges to better consider the cases of individuals with ASD (Weiss, 2001). Experts noted that knowledge on genetic, as well as other biological, influences of ASD might influence fact finders to take expert testimony on ASD more seriously than without it and, correspondingly, it may help the court to better understand the nature of ASD through a *medical model*. Further, experts also said that presenting knowledge on the genetic influences of ASD may increase mitigating attitudes towards the responsibility of accused offenders with ASD, aligning with previous literature proposing that behavioral science expert evidence on the biological influences of ASD could potentially reduce perceptions of blameworthiness among the diagnosed (Weiss, 2001). Although these views did not appear to be a fundamental aspect of how experts perceive and approach their roles, these results suggest that experts are cognizant of the potential benefits of presenting evidence on the genetic influences of ASD and how these types of evidence on might be potentially perceived by the court. Therefore, the genetic influences to ASD may be relevant to the roles of experts, as well as how and why experts may choose to present these types of evidence in order to further *educate* the court on the disorder.

One thing worth noting is that although some participants who had served as expert witnesses on criminal cases had only served for the prosecution or defense, while others had served as experts for both. Yet, the author observed no marked differences in opinions on any issues between participants who had only served as experts for one party and those that had served for both parties. The fact that no differences were observed is consistent with the notion that the role of the expert is not to advocate for opposing parties, but to serve as an objective *educator* for the court about the case and the area of expertise (Auxier, 1989).

There are a few limitations to this research in relation to the chosen methodology and the research sample. As participants volunteered to take part in interviews, it is possible that the views of those who desired to participate may be different than those who declined to participate or did not respond to the interview requests. As the sample was procured from online expert witness directories, it is possible that the views of individuals listed in these directories may differ from experts who are not listed in these directories. Another potential limitation is the lack of experience of many of the experts interviewed for this study; seven experts in this research had served in five or fewer cases involving ASD, two did not state how many cases in which they had served, and most experts had served on twenty or fewer cases. Thus, it is unknown how more case experience of experts may have influenced their answers or perceptions with regard to the issues in this research.

Further, experts are often instructed by attorneys on their testimony, specifically with regard to the legal test that the expert's testimony and evidence seeks to inform in court (e.g. Daubert or Frye), which may influence how experts approach their testimony or how they perceive their roles in cases involving ASD. The scope of this study does not examine how this instruction may influence expert perceptions, but this would be an interesting area of future research. Finally, grounded theory methods require researchers to inductively analyze the data, focusing on characterizing emerging themes, which can sometimes raise questions regarding the trustworthiness of how the data is portrayed (Kolb, 2012). By establishing high

interrater reliability of the coding scheme by using a second independent coder, the author attempted to better ensure the trustworthiness of the data and results presented here.

In all, these results reveal that the ways in which interviewed experts perceive and approach their roles as expert witnesses in cases involving ASD speak to existing literature on how the roles of experts, both in general legal contexts and in relation to ASD cases, have been previously characterized. The expert witnesses involved in this research, influenced by both internal factors, including personal experiences in previous cases, and external factors, including general opinions regarding ASD and its relationship to the justice system, appear to view their roles in court as *reconstructionists*, *educators*, *myth-dispellers*, and most of all, *communicators*, actively using their testimony or expert opinion to fill these roles in cases. They also seem to believe that conveying the genetic influences to ASD may be relevant in court, as well as relevant to their roles as expert witnesses in cases involving ASD.

In addition to illuminating ways in which expert assistance may be used to influence the decision-making of fact finders in cases and on issues related to ASD, this research should also serve as fundamental insight for other expert witnesses on how some experts choose to approach their roles as expert witnesses in court, their views on the main objectives of their expert assistance, and ways in which experts use their testimony to actively counter societal misperceptions and myths about ASD. The relevance of expert evidence on ASD is not limited to the areas of testimony or cases discussed in this research (e.g. fitness to participate in trial, admissibility of interviews, parole hearings, etc.), and these other areas of expert evidence with regard to ASD should be studied in future research. Even so, results of this research help to augment literature on how individuals in the legal system aim to influence societal perceptions of ASD, as well as mental health evidence more generally, and ways in which the law and those within legal roles can serve as educators for society members on ASD.

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Figure 1.
Model of internal and external factors that influencing experts' perceived roles as an expert witness in ASD cases.

Table 1

Expert Demographics, n=19.

Demographic	n
<u>Gender</u>	
Male	15
Female	4
<u>Location</u>	
California	5
Pennsylvania	3
Texas	2
Florida	1
Mississippi	1
Michigan	1
Rhode Island	1
New Jersey	1
Minnesota	1
Connecticut	1
Wisconsin	1
Massachusetts	1
<u>Education</u>	
M.D.	6 (total)
Pediatrics	3
Psychiatry	3
Ph. D.	10 (total)
Criminology	1
Clinical Psychology	6
Educational Psychology	2
Educational Sociology	1
M. A.	3 (total)
Educational Psychology	1
Social Work	1
Speech/Communication	1
<u>Years in Field</u>	
0–5 years	0
6–15 years	3
16 – 29 years	3
30 years +	10
Unknown	3
<u>Number of Cases</u>	
0–5	7

Demographic	n
6–10	5
11–20	1
20–99	2
100+	2
Unknown	2
Party Served (in criminal cases, n=14)	
Prosecution	2
Defense	7
Both	5
Types of Cases	
White Collar Crime	2
Assault (Non-Sexual)	5
Sex Crimes	9
Death Penalty	3
Custody Cases	4
Malpractice Suits	1

Table 2

Hierarchical Organization of Interview Codes and Categories

<u>Internal</u>
Personal Reactions to Cases Involving Autism
Causes to Crime
Sympathy
Wrong Diagnosis
Using Expertise to Communicate
Explain Symptoms
Educate Lay Understandings
<u>External</u>
Effects of Knowledge of Autism in the Criminal Justice System
Positive
Mitigation
Criminal Justice Actors Better Understand What's Going On and What to Do
Negative
Aggravate
'Getting Off'
Concerns about Autism in the Criminal Justice System
Lack of Knowledge and Understanding of Criminal Justice Actors
Autism and Violence
Criminal Justice System Not Equipped
Genetics of Autism Relevant?
Medical Model
Mitigation