

CHAPTER 1

Overview of Forensic Psychology

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DEFINITION OF FORENSIC PSYCHOLOGY

The word *forensic*, derived from the Latin, *forensis*, means “forum,” the place where trials were conducted in Roman times. The current use of the term *forensic* typically denotes some involvement of a particular field of study in a legal forum. There is no uniform or commonly accepted definition of forensic psychology—many exist. More narrow definitions limit forensic psychology to applications of clinical psychology to legal matters—typically in the context of evaluating litigants whose mental states are at issue in legal proceedings—whereas broader definitions include applications of all areas of psychology (e.g., clinical, developmental, social, experimental) to legal matters. An example of this narrower scope is provided by the American Psychological Association’s definition of forensic psychology as a specialty: “the professional practice by psychologists within the areas of clinical psychology, counseling psychology, neuropsychology, and school psychology, when they are engaged regularly as experts and represent themselves as such, in an activity primarily intended to provide professional psychological expertise to the judicial system” (Heilbrun, 2000, p. 6). In contrast, a broader perspective is provided in the Specialty Guidelines for Forensic Psychology (American Psychological Association, in press), which define forensic psychology as “professional practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters.” For purposes of this volume forensic psychology is defined broadly as the application

of psychological research, theory, practice, and traditional and specialized methodology (e.g., interviewing, psychological testing, forensic assessment, and forensically relevant instruments) for the express purpose of providing assistance to the legal system.

A BRIEF HISTORY OF FORENSIC PSYCHOLOGY

Psychologist Hugo Münsterberg, a student of Wilhelm Wundt and a professor at Harvard University, is generally credited with founding the field of forensic psychology. His landmark book, *On the Witness Stand* (1908), is comprised of an introduction and eight essays that describe how psychologists could be of assistance to the legal system. Relying in part on his own experience as an expert witness, Münsterberg considered topics as diverse as eyewitness identification, false confessions, hypnosis as a crime prevention measure, and the potential value of precursors of the modern-day polygraph and concluded that it was “astonishing that the work of justice is ever carried out in the courts without ever consulting the psychologist” (p. 194). In response to publication of Münsterberg’s text, John Wigmore, a law professor and leading scholar on the law of evidence, published a satirical article in the *Illinois Law Review* (1909) mocking psychology’s potential to assist the legal process. Wigmore’s criticisms did have some merit. Münsterberg’s book lacked any references, and Bartol and Bartol (1999) described some of his claims as “exaggerated” and “rarely empirically based” (p. 6).

Indeed, Münsterberg’s claims for the contributions that psychology could make to the legal system may have been

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premature since, at the beginning of the 20th century, psychology was in its infancy and certainly lacked sufficient scientific foundation to support the admissibility of “expert” testimony. Thus, despite Münsterberg’s impassioned pleas for psychology’s involvement in the legal system, his suggestions were largely ignored. However, Münsterberg certainly generated interest in the possibility that someday psychology might make contributions to the judicial process. That Münsterberg saw what is now referred to as forensic psychology as being broadly defined and having the potential to make many contributions to the law is indicated by his observation that psychologists, in addition to providing insights into the characteristics of individuals in particular cases (e.g., witnesses or defendants), could also contribute to what was known about the legal system more generally:

I have written the following popular sketches, which select only a few problems in which psychology and law come in contact. They deal essentially with the mind of the witness on the witness stand; only the last, on the prevention of crime, takes another direction. I have not touched so far the psychology of the attorney, of the judge, or of the jury—problems which lend themselves to very interesting experimental treatment. (Münsterberg, 1908, p. 11)

Around this same time, psychologists and other mental health professionals began providing assistance to the courts in matters of delinquency and dependency, by evaluating children who were the subject of proceedings that were occurring in “juvenile courts”—the first of which was established in Chicago in 1899—and making recommendations for interventions and dispositions. Indeed, some commentators (see, e.g., Otto & Heilbrun, 2002) have observed that this involvement constitutes psychologists’ first real contributions to the legal process, and it is the forensic evaluation role that has gone on to define for many what forensic psychology is today.

Because they were not physicians, psychologists were sometimes barred from testifying in legal proceedings on the grounds that they did not have the requisite expertise to testify about matters involving the psychological functioning of litigants and others. However, in 1962, the D.C. Circuit Court of Appeals held in *Jenkins v. United States* that psychologists could provide expert opinions about mental illness at the time a defendant was alleged to have committed a criminal offense. In the court’s opinion, Judge David Bazelon, after reviewing the training and qualifications of psychologists, concluded that physicians were not uniquely qualified to offer expert testimony on matters involving mental disorders, and courts, when

considering who should be permitted to provide expert testimony about such issues, should consider factors such as the proffered expert’s training, skills, experience, and knowledge. Subsequent to this decision, psychologists entered the courts with increasing frequency and offered expert testimony on a wide range of legal issues.

In 1954, the Supreme Court ruled that racial segregation in the public schools violated the equal protection clause of the Constitution (*Brown v. Board of Education*). In his opinion for a unanimous court, Chief Justice Earl Warren referenced research conducted by psychologists Kenneth and Marie Clark that was offered as evidence by attorneys representing the plaintiffs that racial segregation had deleterious effects on the psychological development and functioning of African American children. Although the value of the Clarks’ research and their resulting interpretations have been questioned (see, e.g., Wolters, 2005) the Supreme Court’s reference to their work is cited as evidence of the legal system’s increasing willingness to look to the expertise of psychologists in matters that go beyond assessment of litigants’ mental states. Since that time psychologists have offered what has been referred to as *social framework testimony* (Monahan & Walker, 2010) in a variety of matters that addresses such diverse topics as the (in)accuracy of eyewitness identification, the biasing effects of pretrial publicity, and consumer confusion in the context of trademark litigation. In addition, other foci of forensic psychology include providing treatment to legally involved populations, researching and consulting with attorneys on matters such as jury selection and case presentation, and studying the legal system and its operation (e.g., efficacy of drug courts, effects of transferring juveniles to criminal court for prosecution and sentencing).

Forensic psychology is unique as a specialty. By its very nature, it operates in another system as its practitioners attempt to provide assistance to attorneys, judges, juries, and the legal system more generally. This practice requires not only an understanding of how the legal system operates, but a working familiarity with statutes and case law that are relevant to the particular issues(s) at hand. At this time, only a minority of psychologists who identify themselves as forensic specialists have completed any kind of formal forensic training at the doctoral level. Rather, most have obtained a doctoral degree in some general specialty (e.g., clinical psychology, developmental psychology, experimental psychology, social psychology) and supplemented this with limited graduate coursework, a postdoctoral fellowship, or continuing education. However, within the past 25 years we have seen development

of more focused graduate training in the forensic arena (Packer & Borum, this volume).

Attempts to define forensic psychology as a specialty or subspecialty began in the 1970s. The American Psychology–Law Society was established in 1969 and, shortly thereafter, affiliated with the American Psychological Association as a division. In 1978, the American Board of Forensic Psychology (ABFP) was established to certify psychologists with competence in the forensic area. Shortly thereafter ABFP affiliated with the American Board of Professional Psychology. And, in 2001 the American Psychological Association formally recognized forensic psychology as a specialty.

The Specialty Guidelines for Forensic Psychologists, which provide guidance for psychologists engaged in forensic pursuits, were first published in 1991 (Committee on Specialty Guidelines for Forensic Psychologists), and were subsequently revised and adopted by the American Psychological Association Council of Representatives in 2011 as the Specialty Guidelines for Forensic Psychology. In addition, the American Psychological Association and other professional organizations (e.g., American Academy of Clinical Neuropsychology, National Academy of Neuropsychology) have published a variety of guidelines and position statements on matters of relevance to forensic psychologists (e.g., statements on impact of third-party observers on examinations, guidelines for conducting child custody and dependency evaluations, guidelines on use of response-style measures in forensic evaluations).

Finally, journals devoted to the area abound (e.g., *Law and Human Behavior*, *Psychology*, *Public Policy and the Law*, *Behavioral Sciences and the Law*, *Journal of Forensic Psychology Practice*), and a number of forensic psychology references have been published in their second or third editions (e.g., Grisso, 2003; Melton et al., 2007; Rogers, 2007). Thus, a little more than 100 years after Münsterberg first beseeched attorneys and judges to consider the contributions that psychologists could offer to the legal process, forensic psychology is a vibrant, well established specialty that continues to grow.

ORGANIZATION OF THIS VOLUME

Although the activities of forensic psychologists are diverse, the bulk of this volume is focused on forensic assessment activities. The initial section is devoted to professional issues that are of relevance to all forensic pursuits, the second section is concerned with evaluation of

persons whose mental state is at issue in criminal proceedings, the third section focuses on evaluation of persons involved in the criminal justice system, the fourth section includes chapters that address a variety of special assessment matters, and the last section is devoted to a variety of nonclinical, nonassessment activities in which forensic psychologists may become involved.

Overview

This section includes three chapters that address overriding issues that are relevant to all forensic practitioners: training in the specialty, the ethical obligations that shape the work of psychologists when engaged in forensic pursuits, and how the law shapes the practice of the specialty and how psychologists communicate their work and findings to the court.

Forensic Training and Practice

Historically, psychologists who specialized in forensic pursuits gained relevant knowledge and skills through on-the-job training and intermittent continuing education. A few texts devoted to forensic psychology practice were published in the 1970s and early 1980s (*The Role of the Forensic Psychologist*, Cooke, 1973; *Who Is the Client?*, Monahan, 1980), and a handful of doctoral programs devoted to the intersection of law and psychology were developed around this same time (University of Alabama, University of Nebraska, and Florida State University). Much has changed in the past half century. There are currently a large number of masters, doctoral, internship, and postdoctoral training programs devoted to forensic pursuits (go to www.ap-ls.org/education/GraduatePrograms.php for a listing and description of these programs) and continuing education opportunities abound, including an organized and ongoing program of study offered by the American Academy of Forensic Psychology (go to www.aafp.ws for review of current offerings).

Integral to demonstrating the establishment of a substantive specialty is the existence of training opportunities and a system or systems that allow practitioners to demonstrate their competence in the specialty area. In Chapter 2, Ira Packer and Randy Borum review the roles of social, developmental, cognitive, and clinical psychologists in the field and consider areas of focus, subspecialization, and psycholegal issues addressed by forensic psychologists. They describe graduate training in the field, doctoral programs, and joint degree programs (those that award the PhD or PsyD and the JD), and discuss levels of

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training, internship offerings, postdoctoral fellowships, and continuing education.

Ethics in Forensic Practice

Psychologists working in the legal system are faced with ethical challenges. Many of these are similar to challenges experienced by psychologists practicing in other specialty areas, and some are more specific to forensic practice. That the unique challenge of forensic practice was appreciated by organized psychology is evidenced by development of the “Specialty Guidelines for Forensic Psychologists” (Committee on Specialty Guidelines for Forensic Psychologists, 1991), inclusion of a special forensic practice section in the 1992 version of the *Ethical Principles of Psychologists and Code of Conduct* (American Psychological Association, 1992; hereinafter APA), and development by APA of practice guidelines for some more focused forensic assessment activities, including evaluation of children and families in cases of disputed custody (American Psychological Association, 2010) and evaluation of children in caretakers in dependency (i.e., abuse/neglect) proceedings (American Psychological Association, 1998). In addition, practice guidelines and statements relevant to forensic practitioners have been published by a number of related professional organizations including the American Academy of Clinical Neuropsychology and the National Academy of Neuropsychology. Most recently, the forensic practice guidelines were revised (American Psychological Association, in press). Familiarity with such guidelines and statements is important for informed forensic practice.

The work of forensic psychologists is probably scrutinized more than the work of any other psychologists (Heilbrun, Grisso, & Goldstein, 2008). Reports and testimony summarizing the opinions reached by the psychologist are subjected to both criticism and formal cross-examination. The findings of forensic assessments often have profound effects on the lives of litigants, whether used to support a finding awarding or denying a parent custody of a child, grant a sum of money to a plaintiff in a personal injury case, or end or continue the involuntary hospitalization of a litigant previously adjudicated not guilty by reason of insanity. Psychologists are expected to be knowledgeable about specific statutes, case law, and rules of evidence, and have experience in conducting forensic assessments. The Ethical Principles of Psychologists and Code of Conduct (American Psychological Association, 2002), of course, apply to *all* areas of professional psychological activity. However, because of the conflicts between

the demands of the legal system and the EPPCC, forensic psychologists sometimes face challenges in attempting to satisfy the court and meet their professional obligations. In Chapter 3, David Martindale and Jon Gould identify the unique demands encountered by forensic psychologists, discuss professional standards implicit in the competent professional practice of forensic psychology, and make clear that psychologists should practice in a way that is consistent not only with the APA’s Ethical Principles but with other relevant guidelines and standards, given the stakes involved in legal matters.

Legal Contours of Expert Testimony

Forensic psychologists typically conduct evaluations with the expectation that their findings will be presented via written reports or oral testimony. Whereas witnesses of fact (lay witnesses) are typically limited to testifying about knowledge they have acquired firsthand through their senses (generally, what they have seen and heard), experts are permitted to offer to the court not only what they have learned of themselves, but also resulting opinions and the underlying reasoning.

Steven Erickson and Charles Ewing (Chapter 4) examine the structure and function of expert testimony that impact psychologists who enter the courtroom. They review the general legal rules that govern expert testimony, including the Federal Rules of Evidence, explain statutes and case law that determine who can be qualified as an expert and how that occurs, and discuss the law surrounding the admissibility of expert testimony and the limitations placed on experts when testifying. Selected practical aspects of the process of providing effective ethical expert testimony are provided as well, focusing on specific types of expert testimony, cross-examination, and the issue of immunity of experts from civil liability.

Forensic Report Writing

As previously noted, forensic psychologists typically conduct evaluations with the expectation that their findings will be presented to others (e.g., the judge, jury, or retaining attorney). Reports psychologists write that summarize the evaluation process, their main findings, the reasons or data that support their findings, and key opinions are integral to the forensic process. Indeed, well-written reports can obviate the need for oral testimony. Richard DeMier, in Chapter 5, reviews the nature and purpose of report writing, discusses some of the key research examining the report-writing practices of forensic psychologists, and provides some helpful direction to those seeking to

improve how they communicate their practices, findings, and opinions to the courts.

Forensic Evaluations in Civil Proceedings

Accurate assessment of examinees' emotional, behavioral, and cognitive functioning is crucial given the stakes involved in civil proceedings. Litigants in civil proceedings can receive financial awards, important personal rights can be restricted or removed in guardianship and related proceedings—including the right to manage one's finances and make health-care decisions, the right to parent or visit one's children can be removed or limited in dependency or family court proceedings, and persons' liberty can be restricted via different involuntary hospitalization proceedings.

Child Custody Evaluations

Assessment of parents and children in cases of disputed custody is one of the most complex and challenging forensic evaluation tasks (Fuhrmann & Zibbell, 2011). The vast majority of forensic evaluations involve assessment of one person (e.g., a personal injury litigant, a criminal defendant for whom trial competence is at issue, a person who is subject to guardianship or conservatorship proceedings) with respect to relatively specific, focused, and well-formulated psycholegal abilities. In contrast, forensic evaluations conducted in the context of custody disputes require assessment of multiple persons (e.g., parents, children, parents' significant others) in multiple spheres, and—too frequently—in the absence of well-defined criteria. Because the stakes are so significant in these matters, at least one parent is apt to be angry about or resentful of the examiners' opinions and recommendations. Consequently, ethics complaints against forensic psychologists involved in this area of assessment are not uncommon. In Chapter 6, Jonathan Gould and David Martindale describe the legal standards for the determination of custody in the United States, review child custody evaluation guidelines developed by professional organizations, and provide important recommendations for competent practice in this very important pursuit.

Assessment in a Child Protection Context

Many more children are involved in legal proceedings in response to allegations of abuse or neglect by caretakers than are involved in legal proceedings involving parental disputes regarding custody and visitation. Yet, matters relating to child custody evaluation have received

considerably more attention. This, of course, is unfortunate given what is at stake for children who are the subjects of dependency proceedings. Whereas in many cases of disputed custody the legal dispute often distills to which parent and what circumstances are *better* for the child, in dependency proceedings the question too often is *whether either parent or a particular parent can provide a basic and safe environment for the child* (Budd, Connell, & Clark, 2011). Thus, the stakes in many dependency proceedings are likely higher than the stakes in most custody proceedings. It is this very reason why it is of utmost importance that psychologists evaluating these children and their parents accurately describe their abilities and needs.

Chapter 7, by Karen Budd, Mary Connell, and Jennifer Clark, goes a long way toward the goal of improving evaluations conducted by psychologists in such contexts. The authors provide an overview of the legal context of dependency proceedings, discuss the relevant empirical literature regarding child abuse and neglect, review various methods of assessment data collection, and make recommendations regarding communicating findings and opinions to the court.

Psychological Evaluation of Emotional Damages in Tort Cases

The law allows those who have been harmed to bring suit against those they believe are responsible in order to be compensated for the harm they endured (Kane & Dvoskin, 2011). To prevail in a personal injury lawsuit, the plaintiff typically must demonstrate that he or she was harmed by the defendant's breach of some duty. The plaintiff must also demonstrate a relationship between the breach and the harm, such that the harm would not have occurred but for what the defendant did: the concept of *proximate cause*.

In Chapter 8 on personal injury evaluation, William Foote and Craig Lareau first review the legal framework of personal injury cases and the law of torts. They then offer an assessment model that can be employed by the examiner. They discuss in detail how the forensic psychologist can go about assessing the plaintiff's functioning both before and after the alleged breach, the distress endured by the plaintiff (if any), the extent of impairments and injuries to the plaintiff's functioning, the likely cause of any impairments or injuries, and the prognosis and steps necessary to restore the plaintiff to his or her preincident functioning.

Disability and Worker's Compensation

Persons whose ability to work is significantly impaired as the result of emotional, behavioral, cognitive, or physical

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impairments may be entitled to important and significant public (e.g., Social Security benefits, Supplemental Security Income, worker's compensation benefits) and private (via purchased disability insurance) benefits (Drago Piechowski, 2011). Crucial to decision making regarding whether claimants are entitled to such benefits are comprehensive and accurate assessments of their emotional, behavioral, and cognitive functioning, and how such affect their ability to work. But the mere presence of illness or impairment is not enough. Rather, there must be an illness or impairment that has a significant impact on the claimant's work-related abilities. In Chapter 9, Lisa Piechowski reviews various disability benefits programs and provides a model for assessing persons referred for evaluation in these matters.

Employment Discrimination and Harassment

Title VII of the 1964 Civil Rights Act bars discrimination based on race, sex, religion, or national origin. Forensic psychologists may be asked to evaluate persons who allege emotional harm stemming from alleged discrimination and harassment. In Chapter 10, Nancy Lynn Baker, Melba Vasquez, and Sandra Shullman present the legal bases underlying these claims. Forms of illegal discrimination, including harassment, sexual harassment (heterosexual and same-sex), hostile environment, and retaliation are considered and the professional literature on sexual and racial discrimination is reviewed. The roles of the forensic psychologist are described, and specialized assessment methods to employ when evaluating persons alleging employment discrimination and harassment are presented.

Forensic Assessment for High-Risk Occupations

Forensic psychologists are sometimes asked to examine job candidates for high-risk occupations (e.g., law enforcement personnel, firefighters, security, commercial pilots) to assess how their emotional and behavioral functioning may impact their job performance, if hired. In addition, referrals are made to conduct fitness-for-duty evaluations when questions exist about a current employee's ability to perform the full duties associated with his or her position. Because these evaluations impact examinees' employment status, they are subject to considerable legal requirements and regulations, they present many unique challenges that are not present in other types of forensic evaluations, and examiners may be at increased risk for ethics or licensing complaints stemming from dissatisfied examinees. The complicated nature of this

subspecialty is reflected, at least in part, by board certification in Police and Public Safety Psychology now being available by the American Board of Professional Psychology (go to www.abpp.org/i4a/pages/index.cfm?pageid=3688 for more information about this newly established board). In Chapter 11, David Corey and Randy Borum discuss the many complicated legal issues surrounding these evaluations, review representative ethical issues involved, and review appropriate assessment approaches.

Forensic Evaluation in Americans With Disabilities Act Cases

Whereas the Civil Rights Act of 1964 banned discrimination on the basis of race, sex, religion, and national origin, it was not until passage of the Americans With Disabilities Act of 1990 (ADA) that discrimination against persons with physical and mental disabilities was prohibited. Designed in part to allow persons with disabilities to achieve maximal functioning in the workplace, this legislation outlawed discrimination on the basis of disability for hiring, training, compensation, and benefits (Goodman-Delahunty, 2000).

In Chapter 12, William Foote examines the issue of disability in the workplace and how the ADA fits with existing disability systems. He details the impact of discrimination on the basis of disability, with a focus on mood disorders, learning disabilities, and substance abuse disorders. Foote presents assessment methodologies that can be used to evaluate persons making ADA claims, and he considers issues such as the assessment of damages and the impact of the employer's failure to provide reasonable accommodations. He also explores the topics of disparate treatment and disparate impact assessments, reprisals for pursuing claims, and the impact of harassment and hostile work environments on those with disabilities.

Civil Competencies

The American culture's value of autonomy is reflected in the law's recognition that all adults, absent significant impairment or limitations, enjoy the right to manage their personal affairs absent interference from or meddling by the state (Melton et al., 2007). However, questions may arise regarding a person's ability to make informed, reasoned judgments that are in his or her best interests. These questions may be raised in matters involving the ability to make health-care decisions, manage one's finances, or execute a will or contract (Drogin & Barrett, 2010).

Concerns about a particular person's capacities may develop at or around the time the decision of interest is to be made, after the decision of interest has been made, or before the decision is to be made. Decision-making capacity can be affected by a variety of emotional, behavioral, or cognitive impairments.

Eric Drogin and Curtis Barrett (Chapter 13) describe the role of forensic psychologists in the assessment of a variety of civil competencies. After providing a review of the legal concept of competence they discuss a variety of civil competencies that may be brought into question, discuss various assessment approaches, and review specific assessment tools.

Civil Commitment and Involuntary Hospitalization of Persons With Mental Illness

Although involuntary hospitalization is a civil matter, the stakes in these proceedings are high. Persons can be detained for extended periods of time and their liberty and autonomy are strictly limited as a result (Pinals & Mossman, 2011). In Chapter 14, Craig Lareau reviews the legal history of and rationale/justification for involuntary hospitalization, and discusses more recent legal developments including outpatient commitment and conditional release. He also reviews the commitment process and discusses the role forensic psychologists may play in the involuntary examination and hospitalization process with respect to assessment of risk for harm to self and others, assessment of decision-making capacity, and implementation of treatments and other interventions designed to minimize risk of harm.

Evaluation and Management of Sexual Offenders

With the exception of drug offenders, during the 1990s the sex offender population has increased faster than any other group of violent criminals (La Fond, 1998), and ways that the legal system can act against sex offenders have continued to expand during the early parts of the 21st century (Edwards, 2001; Vasquez, Maddan, & Walker, 2008; Witt & Conroy, 2008). Many states have expanded the criminal penalties for second offenses, approximately 40% of states have laws in place that allow for involuntary hospitalization of sex offenders after they have completed criminal sentences for their offenses, and all states have some requirements related to registration and/or community notification.

Mary Alice Conroy and Philip Witt describe the impact of this legislation on forensic practice in Chapter 15. They

review sex offender legislation (including sexual violent predator statutes), issues related to evaluating the sex offender's mental state and risk for recidivism, and ethical concerns.

Forensic Evaluations in Delinquency and Criminal Proceedings

As noted previously, it was the doors of the juvenile court through which psychologists first entered the legal arena in a meaningful way. They continue to be heavily involved in these proceedings today. Similarly, many psychologists specialize in evaluation of criminal defendants, and a review of forensic psychologists certified by the American Board of Professional Psychology (www.abpp.com) reveals that evaluation of criminal defendants in the most common activity of this group of professionals.

The stakes are probably greatest in delinquency and criminal proceedings. Juvenile and adults found responsible for criminal offenses can have their liberty restricted for extended periods of time, and the death penalty remains in place in a majority of states. In this section three key issues that are considered by the criminal courts are addressed: competence, responsibility, and sentencing/disposition.

Forensic Evaluation in Delinquency Cases

Establishment of the first juvenile court in Chicago in 1899 reflected the legal system's understanding that juveniles were different from adults in many important ways, and that these differences required a special response when juveniles ran afoul of the law. The stated goal of the first juvenile courts—rehabilitation rather than punishment—was significantly different from that of criminal courts. Thomas Grisso and Christina Riggs Romaine note that, although the development of the knowledge base regarding how the abilities and limitations of juveniles are important to understanding their involvement with the legal system has lagged when compared to development in other forensic areas, there has been significant growth in the past decade. In Chapter 16, the authors review the current state of knowledge regarding the evaluation of juvenile offenders and use of various instruments and tools.

Capacity to Waive Miranda Rights and the Assessment of Susceptibility to Police Coercion

Confessions to crimes are valuable commodities, which, once introduced to a judge or jury, are exceedingly difficult for defense lawyers to overcome. Unchallenged,

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inculpatory statements are devastating—typically, and at times mistakenly, taken as a clear sign of the defendant’s guilt. In *Miranda v. Arizona* (1966) the U.S. Supreme Court noted that the process of interrogation is hidden from public scrutiny and ruled that the Constitution requires that suspects undergoing interrogation must be informed of their right to avoid self-incrimination. Only confessions that were provided subsequent to a knowing, voluntary, and intelligent waiver of one’s right to avoid self-incrimination are admissible and can be used to prove criminal responsibility Goldstein & Sevin Goldstein (2010). This issue has received increasing attention in the past decade as compelling evidence of convictions based on false and coerced confessions has been unearthed (Drizin & Leo, 2004).

In Chapter 17, Naomi Goldstein, Alan Goldstein, Heather Zelle, and Lois Oberlander Condie examine case law regarding the ability to waive *Miranda* rights and the validity of confessions. They describe research relevant to child, adolescent, and adult *Miranda* rights comprehension, and the relationship between understanding these rights and IQ, academic achievement, reading ability, familiarity with the criminal justice system, race, and socioeconomic status. Forensic assessment instruments, some in their second generation, that have been developed to assist in assessment of an individual’s ability to make a knowing and intelligent waiver are reviewed, and the use of traditional clinical tests as an adjunct to the evaluative process is described as well. The authors also explore the literature on false confessions: the significance of inculpatory statements, frequency of false confessions, and why some defendants may provide a false confession. The authors present methodology for evaluating those factors that may contribute to inculpatory statements that may not be truthful.

Assessment of Competence to Stand Trial

A defendant in a criminal case must be more than just a physical presence in the courtroom; he or she must have, at a minimum, “sufficient present ability to consult with his attorney with a reasonable degree of rational understanding . . . and a rational and factual understanding of the proceedings” (*Dusky v. U.S.*, 1960). Fitness-for-trial assessments are the most common of all criminal evaluations (Hoge, Bonnie, Poythress, & Monahan, 1992; Melton et al., 2007; Zapf & Roesch, 2008). Kathleen Stafford and Martin Sellbom review the legal framework of trial competence, placing it in historical perspective in

Chapter 18 of this volume. They describe the variables relevant to trial competence that are reported in the empirical literature. They examine the methodological approaches to assess competence to stand trial, including the use of forensic assessment instruments designed expressly for this purpose, and consider the issue of trial competence with special populations. Dispositional issues, including prediction of competence restoration, treatment of incompetent defendants, and permanent incompetence, are also discussed.

Evaluation of Criminal Responsibility

Perhaps no other area of the law engenders more attention than the insanity defense (Melton et al., 2007; Packer, 2009). The trial of John W. Hinckley for the attempted murder of President Reagan and his subsequent acquittal by reason of insanity (*United States v. Hinckley*, 1982) fanned the flames of the perceived injustices resulting from insanity defenses. However, public perceptions differ significantly from reality in terms of the frequency of insanity defenses, their rate of success, and what ultimately happens to those acquitted by reason of insanity. The evaluation of a defendant’s mental state at the time of an offense is central to the issue of criminal responsibility and the appropriateness of punishment. These assessments require the “reconstruction” of a prior mental state to assist the trier of fact in rendering a decision of legal responsibility.

In Chapter 19, Alan Goldstein, Stephen Morse, and Ira Packer explain the basic doctrines of criminal liability. They focus on mental state issues relevant to culpability, including negation of *mens rea*, provocation and passion, extreme mental or emotional disturbance, voluntary and involuntary intoxication, imperfect self-defense, and duress. The authors review the history of the insanity defense, including its development, changes, and recent reforms. Ethical issues and conflicts that arise when conducting these assessments are explored, and the authors describe a methodology for assessing a defendant’s mental state at the time of the alleged offense.

Sentencing Determinations in Death Penalty Cases

Unlike any other form of punishment, the death penalty is the ultimate, irrevocable sanction. The Supreme Court held that death penalty statutes must not be “capricious” and that specific guidelines are required to avoid the “uncontrolled discretion” of judges and juries, whereby “[p]eople live or die, dependent on the whim of 1 man or 12”

(*Furman v. Georgia*, 1972). Similarly, the Court rejected North Carolina's statute making any first-degree murder conviction in that state punishable by death (*Woodson v. North Carolina*, 1976), reasoning that each case must be individualized. In *Gregg v. Georgia* (1976), the Court accepted as constitutional that state's requirement that at least one aggravating factor must be established during a separate sentencing phase of a capital trial before a defendant could be sentenced to death. The defense was permitted to introduce mitigating facts or circumstances for the jury or judge to weigh against the aggravating factor(s) before the death penalty could be imposed. Because sentencing must be individualized, the defense is permitted to introduce *any* aspect of the defendant's character or record and *any* circumstances of the offense in mitigation (*Lockett v. Ohio*, 1978).

In Chapter 20, Mark Cunningham and Alan Goldstein describe the nature and structure of capital trials and the data regarding the administration of the death penalty. They examine landmark Supreme Court decisions related to capital punishment, and ethical issues regarding the role of the psychologist in sentencing evaluations and in assessments addressing competence to be executed. The authors discuss methodology in conducting capital evaluations, including assessment parameters. In their chapter, Cunningham and Goldstein focus on violence risk assessment in death penalty cases and detail common errors in such evaluations. They also discuss issues related to base rates, risk management, and group statistical data.

Special Assessment Issues

Because some matters and challenges present themselves in a variety of forensic evaluation contexts, it makes most sense that they be addressed independently. These activities are the subject of this section.

Evaluation of Malingering and Related Response Styles

How an examinee is approaching the assessment process—that is, the examinee's response style—must be addressed by all forensic psychologists when conducting examinations. Examinees may adopt a variety of approaches to the forensic evaluation process given the stakes involved, and only when the examinee's approach is considered can the psychologist draw a conclusion about how accurately the examinee's presentation reflects his or her genuine abilities or functioning.

Evaluators in a forensic context cannot accept unquestioningly an examinee's statements and presentations as valid and accurate representations or indicators of their functioning and adjustment. Given the stakes involved in forensic matters (e.g., financial reward in a personal injury case, custody of a child in a family law matter), litigants may respond in self-serving and less-than-candid ways. In Chapter 21 of this volume, Richard Rogers and Scott Bender present an overview of conceptual issues regarding assessment of response styles, with a focus on identifying examinees feigning impairments of some type. They review explanatory models of why individuals may attempt to portray psychological and physical impairments, and they examine major empirical issues and false assumptions frequently made about various responses and their assessment.

Violence Risk Assessment

Despite the U.S. Supreme Court's finding in *Barefoot v. Estelle* (1983) that clinical predictions of violence could *not* be made with an acceptable degree of reliability/validity, the Court concluded that to prevent such testimony was "like asking us to disinvent the wheel." Thus, consideration of the risk an examinee presents for aggressive behavior directed toward others continues to be relevant to a variety of forensic assessment pursuits including involuntary hospitalization proceedings in both criminal and civil venues (Heilbrun, 2008; Otto & Douglas, 2010).

In Chapter 22, John Monahan describes the relevance of violence risk assessment to the legal system and how such evidence is legally evaluated. He contrasts clinical and actuarial risk assessment and then reviews instruments developed specifically to evaluate risk of violence. Monahan summarizes those risk factors related to the occurrence of violence as identified in the MacArthur Violence Risk Assessment Study (Monahan et al., 2001; Steadman et al., 2000), and addresses the issue of the relationship between clinical and actuarial risk assessment in formulating opinions and explains how such opinions should be communicated.

Clinical and Forensic Issues in the Assessment of Psychopathy

Psychopathy is certainly the most researched personality disorder, presumably because of its strong relationship to violent and nonviolent criminal offending. Thus, the degree to which an examinee manifests psychopathic

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traits is relevant in a number of litigation areas in which risk for offending or reoffending is an issue including involuntary hospitalization proceedings, criminal sentencing proceedings including capital cases, and family court and dependency proceedings.

Forensic assessments frequently incorporate traditional psychological tests as well as instruments designed to provide data relevant to specific psycholegal questions. In the field of psychopathy, a specific form of personality disorder, we have witnessed the development of such specialized methodologies during the past two decades (Hare, 1996). The presence or absence of psychopathy is relevant to a number of civil (e.g., civil commitment) and criminal (e.g., probation and parole, detention under violent offender statutes, and death penalty cases; Hart, 2001) contexts. The reliable and valid assessment of psychopathy is, therefore, critical. In Chapter 23, Stephen Hart and Jennifer Storey describe the nature of psychopathy. They review various assessment methodologies, and consider questions, conflicts, and legal issues arising when forensic psychologists assess psychopathy.

Child Sexual Abuse Evaluations

Understanding the functioning and abilities of children who may have been sexually abused is relevant in a variety of legal contexts, including criminal proceedings, dependency proceedings, and custody proceedings. Psychologists may be asked to engage in a variety of activities including assisting the court as it attempts to determine whether abuse occurred (via examining the child and/or providing more general information about children's abilities) and making recommendations for treatment and other interventions in cases of confirmed abuse.

When allegations are made involving sexual abuse of a child, the victim is, typically, the only witness to the crime. Usually, medical evidence is absent; behavioral symptoms, if present, may be attributable to factors other than or in addition to the claimed abuse; and admissions of responsibility by the alleged perpetrators are rare (Johnson, 2004; Myers, 1998). There is considerable controversy in the academic and practice community about the frequency of false reports of abuse attributable to distortions of memory, suggestibility, or other causes. However, there is agreement that mental health professionals retained to evaluate a child who is alleged to have been abused must be familiar with relevant statutes and case law, the professional literature on child development, behavioral

manifestations of abuse, and the specialized methodology required to conduct such evaluations.

Kathryn Kuehnle and Mary Connell (Chapter 24) describe a model for assessing child sexual abuse. They review the data on the prevalence of child sexual abuse and those factors demonstrated to increase children's vulnerability to the risk of sexual abuse. Symptom patterns associated with child sexual abuse are examined. In addition, they review the literature on factors that may distort valid recall and reporting of the event in question. They consider the interview process with children who may have been victims of sexual abuse and describe a range of tools and instruments that may assist in the assessment procedure. They also explore relevant legal issues in relationship to these topics.

Other Forensic Consultation Areas

As indicated previously, much forensic psychology practice involves evaluation of litigants whose mental states are at issue in legal proceedings, and the bulk of these evaluations are conducted by clinical and counseling psychologists. However, psychologists may also be involved in the legal arena in nonassessment capacities. Often this work is done by nonclinicians, including but not limited to social psychologists, experimental psychologists, and developmental psychologists. In the final section of this volume some of these nonclinical forensic pursuits are discussed.

Eyewitness Memory for People and Events

In a criminal trial, attempts are made, through the introduction of evidence, to reconstruct what occurred at the moment of the crime. In addition to physical evidence (e.g., fingerprints, tire tracks, DNA), eyewitnesses to the crime (including the victim) may be called to testify at trial about what they observed. However, for a number of reasons, memories may become contaminated, lost, or destroyed, resulting in well-intentioned but nonetheless inaccurate testimony. The consequences for the defendant and society may be significant (Bull Kovera, 2009). Mistakes in eyewitness identification account for more convictions of innocent defendants (exonerated by DNA evidence) than all other factors combined (Brewer & Wells, 2011; Scheck, Neufeld, & Dwyer, 2000; Wells, 2006). In Chapter 25, Gary Wells and Elizabeth Loftus argue for a scientific model to collect, analyze, and

interpret eyewitness evidence. The scientific literature and theory on eyewitness memory for events is reviewed, and they examine factors that may impact accuracy. The literature on eyewitness memory for people, focusing on the ability of eyewitnesses to identify suspects from lineups, is detailed, and those factors that may impair this ability are discussed. Scientific procedures for lineups are suggested to reduce those factors demonstrated to increase error rate.

Voir Dire and Jury Selection

The jury is the hallmark of a democratic system of justice. Decision making as to guilt or innocence in a criminal case and for or against a plaintiff in a civil case is placed in the hands of ordinary citizens who are expected to consider evidence in an objective, unbiased fashion. However, it has long been recognized that potential jurors bring into the courtroom their prior experiences, attitudes, biases, and personality characteristics—factors that may interfere with the impartial outcome of a trial. The process of *voir dire* (to speak the truth), mandated both by federal and state law, is designed to uncover biases that might interfere with the objective weighing of evidence. Who is on the jury is critical, therefore, for both sides in a trial.

In Chapter 26, Margaret Bull Kovera describes the process of *voir dire*, as well as the system developed to challenge potential jurors. She reviews the traditional methods of jury selection, typically relying on conjecture, use of stereotypes, body language, and anecdotal strategies to predict inclinations favorable toward a specific verdict, and contrasts this approach with scientific jury selection as developed by Schulman, Shaver, Colman, Emrich, and Christie (1973). This latter approach relies on demographics, personality traits, and attitudes and their relationship to trial outcome. Kovera explains the limitations of research on jury selection and suggests directions for future research in this area.

Trial Consultation

In some cases psychologists work with attorneys in a solely consultative capacity around a variety of trial and litigation issues—exclusive of presenting expert findings or opinions to a legal decision maker. Most psychologists rarely serve in this role, however, presumably because of the (extra) expense involved. Indeed, given the added costs of this type of consultation, those cases in which psychologists do work in this capacity typically involve

very high stakes, in terms of either the legal outcomes at risk or the economics involved.

As Eric Drogin and Curtis Barrett make clear in Chapter 27, the activities in which these psychologists engage are many, involving tasks as diverse as developing case strategy(ies), identifying and assisting in selection of potential experts, and reviewing the work of experts retained by opposing counsel and assisting the retaining attorney in developing cross-examination strategies and questions. Drogin and Barrett also provide a valuable discussion about ethical challenges psychologists are presented with when working in this capacity.

SUMMARY

Although the roots of forensic psychology date back to the early 1900s, marked by the publication of *On the Witness Stand* (Münsterberg, 1908), and the involvement of psychologists in juvenile courts, it took decades for the field to demonstrate the empirical basis necessary to qualify as evidentiary expert testimony on a regular basis and without question. Both state and federal courts now generally accept the application of forensic psychology theory, research, and methodology to a wide range of civil and criminal legal questions. Programs offering doctorates in forensic psychology have been established, and postdoctoral fellowships, although limited in number, are available. Continuing education programs, presented by APA-approved sponsors, designed to provide the skills, training, and knowledge required of experts in court are readily available. Most recently, the APA approved forensic psychology as a specialty within the field of psychology—a landmark recognition of its current status.

We hope that graduate students and allied mental health professionals reading this book will develop an appreciation for the field as a whole, recognizing its uniqueness, its complexity, and the need for specialized training and knowledge. In addition, each chapter should serve as a reference source on a specific topic, reviewing the state of the art in the 21st century.

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