THE PSYCHOLOGY OF LAW



ISAAC CHRISTOPHER LUBOGO

View my Books and Profile at www.lubogo.org

The Pyschology of Law

Isaac Christopher Lubogo

THE PYSCHOLOGY OF LAW

© 2022 Isaac Christopher Lubogo.

The right of Isaac Christopher Lubogo to be identified as the author of this book has been asserted by him in accordance with the Copy right and Neighboring Rights Act, 2006.

All rights reserved. No part of this publication may be reproduced or transmitted in whole or in part in any form or by any means, electronic or mechanical, including photocopy, recording or any information storage and retrieval system, without permission in writing from the author.

First Edition 2022
ISBN: 978-9913-633-24-6

First published in Uganda by:
Jescho Publishing House
A member of Jescho Group Ltd
Maria's Galleria, Level 3 Room 17,
Luwum Street, Kampala (U), East Africa.
Tel: +256 393 256 545, +256 782 395 293
+256 702 055 211, +256 752 055 211
E-mail: jeschogroupltd@gmail.com
Website: www.jeschogroupltd.co.ug

View this author's profile at:
www.lubogo.org or www.suigenerislawapp.com

Table of Contents

The Pyschology of Law

Dedication..... vi
Abstract..... vii

The History of Psycological Relations to Law 1
Psychology and Law 34
Theories and Models of Justice in Ration to Psychology..... 37

The models of justice in relation to psychology 37
The theories of justice in relation to psychology 40

Biopsychology of Cross Examination 50
Personality and Violence..... 55
Psychopathy and Violence 57
Intelligence and Violence. 59

Understanding Intelligence 60

The Nature-Nurture Debate. 64

The Re-emergence of the IQ-Violence Debate 65
Precursors to IQ testing 67

Mental Illness/Psychriatic Disorder and Violence 72

Nervous Illness 76
Mental Disorder Can Divided Into Numerous Segments 77

Substance Abuse and Violence 85

How psychological disorders affect judicial decisions. 88

Assessment of Insanity..... 121

In regards physiology mental disorder unto judicial decisions. ... 121

Legal context in forensic mental health expertise in judicial decisions 126

Guilt: mens rea..... 126

Guilt: actus reus 129

Sentencing..... 130

The Psychiatric Evidence..... 136

Re-sentencing psychology..... 147

The Relationship Between Psychology and the Law..... 149

Relevance of Psychology in Law 155

Roles of a Legal Psychologist 159

Forensic Psychology..... 164

Brain Development Associated With Eyewitness Testimony 175

Factors affecting eyewitness testimony..... 176

Stress and trauma 179

Intelligence..... 181

Suggestibility..... 184

Source misattribution..... 186

Script-based inferences 188

Socially encountered misinformation 190
Judges and jurors 193
Children and the justice system 194

Child/Juvenile Delinquency 196

Criminal behavior- crimes dealt with by the criminal justice system 197
Psychological assessment in juvenile delinquents 199
Child testimony in court voire dire 201
Language development 203
Memory skills 203
Susceptibility to suggestion 203
Truth-lie competency 205
Credibility and deception detection 206
False Memories 207

Bibiliography 208

Cases 210

Dedication



Oh God, Even my God my High Tower, my refuge, my redemeer, my only source of hope. This and many more is for you Oh God of the mighty universe.

Abstract



Psychology and law are familiar concepts in the experiment we call life. These concepts are of great importance and concern to Psychologists, political scientists, jurists, sociologists, etc. The frequency with which phycology and at times law are misunderstood and misconceived, provoke concern and debate in order to see the relationship between them. One might ask why the order in the arrangement of the concepts, why not law and Psychology but rather Psychology of the law? My answer is simply, it is so arranged because we have Psychology of law, meaning that we can apply psychological lens and principles to these other concepts. The unwearied think that Psychology is not relevant to the concrete realities in the society. This is not true. Psychology is not for those with massive intellects alone, it is approachable, one only need to be disposed, prepared and disciplined. It does not parade only senseless abstract ideas; it rather deals with concrete and particular issues of life.

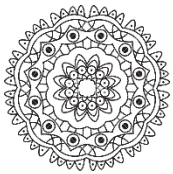
In the course of our exposition, one will discover that Psychology does not have the meaning many attaches to it. Neither does it mean occultism nor atheism; it is rather knowledge of things through the mirror perspective view. The field of psychology and law involves the application of scientific, clinical, and policy aspects of psychology to issues that arise in the legal system. Diverse perspectives are encompassed within psychology and law, including

most of the major subdivisions in psychology (e.g., cognitive, developmental, industrial/organizational, and clinical). So, for example, cognitive psychologists may examine the reliability of eyewitness memory; developmental psychologists may assess the impact of maltreatment and abuse on social and cognitive development; industrial/organizational psychologists may investigate how workplace conditions contribute to the incidence of sexual harassment; and clinical forensic psychologists may provide assessment and treatment services to courts and attorneys, law enforcement agencies, or offenders in correctional settings or under court supervision. In each of these instances, psychologists use research and/or treatment protocols relevant to their specialization to address specific questions that emerge in the law. This article is organized around the intersection of those traditional subdivisions of psychology and the law. The field of psychology and law values contributions from professionals in a variety of different settings including university and research organizations, clinical practice, law enforcement agencies, correctional institutions, and other governmental and nonprofit agencies. Furthermore, it as well values the contributions of professionals.

Thus, it is the main purpose of this edition to espouse the concepts involved, show their relationships and argue that Psychology is particularly important in interpretation of the law due to its unique nature. Within the calculus of factors so as to achieve morality, ethics, common good, substantive justice, etc

"This is how to get away with murder...discredit the witnesses, introduce a new suspect and rebury the evidence..."

The History of Psycological Relations to Law



Questions of potential interactions between psychology and the law existed long before the founding or the establishment of a separate legal system. For example, Francis Bacon (1857) expressed concerns that inappropriate psychological motives held by some actors in the legal system could compromise the system. He suggested that the law should consider natural human tendencies when he said "revenge is a kind of wild justice, which the more Man's nature runs to, the more ought the law to take it out" Centuries passed between Bacon's statement and the formal involvement of psychologists in the law.

In 1843, Daniel M'Naughton attempted to assassinate the prime minister of England, but he erred and instead killed Edward Drummond, the secretary to the prime minister. The court invited nine medical experts to act as forensic psychologists (the court did not use this label at the time, but this term is used today to identify these sorts of individuals; Brigham & Grisso, 2003). Their recommendations led the jury to find M'Naughton not guilty by reason of insanity, and he spent the rest of his life in an institution.

Louis D. Brandeis introduced social science into a legal decision in 1908 (Ogloff & Finkelman, 1999). The state of Oregon charged a

laundry owner with violating gender-specific employment rules; the owner required his female employees to work more than 10 hours per day. The owner appealed his conviction, and Brandeis wrote an extensive brief on behalf of the state. Only a small portion of the Brandeis brief addressed legal arguments, and the rest of the brief presented data-based social science to demonstrate the negative effects of excessive work hours on women. Although Brandeis relied on beliefs about the general physical and psychological inferiority of women, and although the Brandeis brief employed what scholars today view as poor psychological science, the U.S. Supreme Court upheld the law limiting women's working hours. The term "Brandeis brief remains in use "to describe any collection of nonlegal materials submitted in a court case" (Ogloff & Finkelman, 1999, p. 7). In 1954, the field of psychology and the law received a boost with the famous public-school desegregation case, Brown v. Board of Education. A group of 35 social scientists, including many psychologists and psychiatrists, submitted a Brandeis brief to describe the negative impacts of school segregation on children (Brigham &Grisso, 2003). The long-term impact of Brown v. Board of Education is still being assessed, but it firmly established the legacy of psychologists influencing the law.

In the last several decades, psychology and the law has emerged as one of the fastest-growing and most topically diverse areas in psychology. Eric Dreikurs and Jay Ziskin helped to galvanize the field by gathering psychologists to form the American Psychology-Law Society in 1969 (Pickren & Fowler, 2003), and the organization has grown rapidly since its inception. Ogloff and Finkelman (1999) argued that the accelerating status of the field can also be seen in the

growing number of experts testifying in court on legal topics, the increasing involvement of psychologists as consultants in the law, and the growing citation of psychological research by the courts.

Modern psychology was born at the end of the 19th century, but the human search that is its object has been undertaken since ancient times. Psychology's application to law began early in the 20th century and then lay fallow for many years. When the 1970s arrived with a burst of interest in applying psychology to law, social psychology was near the forefront.

In Western culture, contributors to the development of psychology came from many areas, beginning with philosophers such as Plato and Aristotle. Hippocrates philosophized about basic human temperaments and their associated traits. Informed by the biology of his time, he speculated that physical qualities, such as yellow bile or too much blood, might underlie differences in temperament. Aristotle postulated the brain to be the seat of the rational human mind, and in the 17th century Rene Descartes argued that the mind gives people the capacities for thought and consciousness. The mind "decides" and the body carries out the decision a dualistic mind-body split that modern psychological science is still working to overcome. Two figures who helped to found psychology as a formal discipline and science in the 19th century were wilhem wundt in Germany and William James in the United States. During the first half of the 20th century, however, behaviorism dominated most of American academic psychology. In 1913 john b Watson, one of the influential founders of behaviorism, urged reliance on only objectively measurable actions and conditions, effectively removing

the study of consciousness from psychology. He argued that psychology as a science must deal exclusively with directly observable behavior in lower animals as well as humans, emphasized the importance of rewarding only desired behaviors in child rearing, and drew on principles of learning through classical conditioning. In the United States most university psychology departments became devoted to turning psychology away from philosophy and into a rigorous empirical science.

After World War II, American psychology, particularly clinical psychology, grew into a substantial field in its own right, partly in response to the needs of returning veterans. The growth of psychology as a science was stimulated further by the launching of sputnik in 1957 and the opening of the Russian-American space race to the moon. As part of this race, the U.S. government fueled the growth of science. For the first time, massive federal funding became available, both to support behavioral research and to enable graduate training. Psychology became both a thriving profession of practitioners and a scientific discipline that investigated all aspects of human social behavior, child development, and individual differences, as well as the areas of animal psychology, sensation, perception, memory, and learning.

Training in clinical psychology was heavily influenced by Freudian psychology and its offshoots. But some clinical researchers, working with both normal and disturbed populations, began to develop and apply methods focusing on the learning conditions that influence and control social behavior. This behavior therapy movement analyzed problematic behaviors in terms of the observable events

and conditions that seemed to influence the person's problematic behavior. Behavioral approaches led to innovations for therapy by working to modify problematic behavior not through insight, awareness, or the uncovering of unconscious motivations but by addressing the behavior itself. Behaviorists attempted to modify the maladaptive behavior directly, examining the conditions controlling the individual's current problems, not their possible historical roots. They also intended to show that such efforts could be successful without the symptom substitution that Freudian theory predicted. Freudians believed that removing the troubling behavior directly would be followed by new and worse problems. Behavior therapists showed that this was not necessarily the case. To begin exploring the role of genetics in personality and social development, psychologists compared the similarity in personality shown by people who share the same genes or the same environment. Twin studies compared monozygotic (identical) as opposed to dizygotic (fraternal) twins, raised either in the same or in different environments. Overall, these studies demonstrated the important role of heredity in a wide range of human characteristics and traits, such as those of the introvert and extravert, and indicated that the biological-genetic influence was far greater than early behaviorism had assumed. At the same time, it also became clear that how such dispositions are expressed in behavior depends importantly on interactions with the environment in the course of development.

Law and Psychology are two separate disciplines, but they have much in common. Legal psychology involves the practical and psychological investigation of the law, legal institutions and people who come into contact with the law. The psychology of law entails

the use and application of resources and research methods and findings of social psychology and cognitive psychology, developmental psychology and clinical psychology to examine legal assumptions to evaluate whether they truly work or not and think in ways to expand them.

Law is an institution attached to human activities and is based upon an underlying set of assumptions about how people act and how their actions can be controlled. These fundamentally empirical assumptions are of two types; some are descriptive of human behavior or personality for example, how people act. The mind of a person is tuned to act in a particular way, for instance if people expect punishments to follow from certain actions, then they will be less likely to do them. In the largest sense, all of psychology is relevant to substantive law, since any subject of human behavior may be the subject of legal regulation. Learning about the law in a society will not be complete without studying the legal facts that exist in society. These legal facts build and support the understanding of people's behavior and the reasoning of making the law, directing the law, using the law to act against any person that violates the law. Psychology of law is therefore one of the sciences applied to understand the behavioral character of humans in society.

According to *RimjhimVaishnavi,* Psychology has been defined as a science which studies the mental aspect that determines human behavior. In short, it studies the human mind and its effects on human behavior. This includes conative, cognitive and affective aspects. Psychology comes from two Greek words, "psyche" which means soul (mind)." Logos" which means study. Psychology simply

means study of the Personality under psychology refers to our external and visible characteristics, those aspects of us that other people can see.

Psychology can be defined as a scientific discipline that studies mental states and processes and behavior in humans and other animals.[1] Psychology is considered as the science of studying mental aspect which ascertains the human behavior.[2] Psychology was also defined as the science of mental life and provided insightful discussions of topics and challenges that anticipated much of the field's research agenda a century later.[3] Psychological studies cover the conscious and unconscious states of mind. Over time, many things have been included under the ambit of psychology. In the legal realm, it is helpful in determining the veracity of witnesses, mens rea of a criminal while committing the crime and above all, what punishment should be granted to a person keeping in mind his psychological frame of mind. Psychology to some extent has started seeing a criminal as a person having a mental disorder and therefore suggests that such persons should not be punished and should rather be medically treated[4] According to the case of Uganda v Kisembo[5] proved the importance of psychology was revealed as a court's decision whether an intelligence source will be harmed if his identity is revealed will often require complex political, historical, and psychological judgments. Whereas the national interest sometimes

[1] See www.britanica.com

[2] See lawbhoomi.com

[3] The principles of psychology, 1980

[4]written by Rimjhim Vaishnavi, a student of NUSRL.

[5] Criminal Session 203 of 2014) [2019] UGHCCRD 7 (08 February 2019)

makes it advisable, or even imperative, to disclose information that may lead to the identity of intelligence sources, it is the responsibility of the security organizations, not that of a Judge, to weigh the variety of complex and subtle factors in determining whether disclosure of information may lead to an unacceptable risk of compromising the security organization's intelligence-gathering process. For the foregoing reasons, it is in the public interest to allow a limited use of hearsay evidence in matters of this nature, where particularly the undisclosed source of intelligence does not, as in this case, directly implicate the accused standing trial. I therefore find that the prosecution has proved to the required standard that there was communication of information ordinarily in the custody of The External Security Organization to unauthorized persons outside that organization.

Furthermore, the use of psychology in law was evidenced in the case of Uganda v Iranya [6] where the prosecution is required to prove beyond reasonable doubt that it is the accused that caused the unlawful death. There should be credible direct or circumstantial evidence placing the accused at the scene of the crime as the perpetrator of the offence. The accused has no memory of participation. He remembers swallowing three tablets of valium soon after having breakfast during the morning hours and going to sleep in his bed. He woke up at 5.00 pm only to find himself in custody at a police station on allegations that he had murdered his wife, Asienzo Grace. He has obligation to prove this amnesia. He

[6]([2018] UGHCCRD 68 (09 March 2018)

cannot be convicted on the basis of any weakness in his defence but rather on the strength of the prosecution evidence.

The discipline of psychology is broadly divisible into two parts: a large profession of practitioners and a smaller but growing science of mind, brain, and social behavior. The two have distinctive goals, training, and practices, but some psychologists integrate the two.

Today, legal psychology and forensic psychology from the field more generally recognized as "psychology and law". Following earlier efforts by psychologists to address legal issues, psychology and law became a field of study in the 1960s as part of an effort to enhance justice, though that originating concern has lessened over time[7]. The multidisciplinary American Psychological Association's Division 41, the American Psychology-Law Society, is active with the goal of promoting the contributions of psychology to the understanding of law and legal systems through research, as well as providing education to psychologists in legal issues and providing education to legal personnel on psychological issues. Further, its mandate is to inform the psychological and legal communities and the public at large of current research, educational, and service in the area of psychology and law[8]. There are similar societies in Britain and Europe. Psychologists employed at public policy centers may attempt to influence legislative policy or may be called upon by state (or national) lawmakers to address some policy issue through empirical research. A psychologist working in public policy might suggest laws or help to evaluate a new legal practice (e.g., eyewitness

[7]Dennis R. Fox (1999). Injustice. Law, 23, 9-30

[8]"American Psychology and the Law Society". Retrieved 2007-09-12.

lineups.[9] Legal psychologists may hold advisory roles in court systems. They may advise legal decision makers, particularly judges, on psychological findings pertaining to issues in a case. The psychologist who acts as a court adviser provides similar input to one acting as an expert witness, but acts out of the domain of an adversarial system[10]

According to Gordon Allport says that personality is something real within the individual that leads to his or her characteristic behavior. For B.F. Skinner, the word personality is not even a necessary concept for understanding human behavior because the antecedents/causes of human behavior lie in the environment and not in the individual. And for Sigmund Freud, the father of contemporary personality theory, personality is largely hidden, unconscious and unknown. Furthermore, Psychology is first and foremost a vocation. It helps one to understand the mind well as Law is understanding judicial process. It has already been seen through various instances, no legal system is perfect However, psychology is a step towards making a legal system perfect. Any study which relates psychological principles with legal applications is considered as legal psychology. The important goal of psychology is to understand and explain behavior and mental processes. In this case psychology is interested identifying the why this or that? The above involves the use of theories. A theory is an attempted explanation that makes

[9]Examples of legal psychologists in these positions can be found at the American Bar Foundation (Website) and Federal Judicial Center (Website), among others

[10]^See, e.g., Program Archived 2008-02-29 at the Way back Machine, American Association for the Advancement of Science

sense out of a large number of observations. A good theory helps us to make reasonable guess when we do not know the correct answer. These guesses are technically called hypothesis. hypothesis is a tentative and testable or verifiable explanation of the relationship between causes and consequences or effect.

Psychology of law makes it possible to develop theories in legal science and the behavioral nature of humans to reach certain conclusions. Psychological Legal experts do well to bear in mind the underlying circumstances from where to draw conclusions. For example, a prosecutor or an investigating officer who employs psychology is able to draw almost conclusive findings which are vital to the case. The crime scene is presumed to reflect the murderer's behavior and personality in much the same way as furnishings reveal the homeowner's character. The idea of inferring one set of characteristics from one set of crime-scene actions relies on two major assumptions. Firstly, there is the issue of behavioral consistency: the variance in the crimes of serial offenders must be smaller than the variance occurring in a random comparison of different offenders. Research findings indicate that this appears to be the case for rapists. Criminologists, in adopting a 'molar' approach, define behavioral consistency as the probability that an individual will repeatedly commit similar types of offences. In contrast, psychologists have emphasized a 'molecular' analysis of criminal behavior, where behavioral consistency is defined as the repetition of particular aspects of behavior if the same offender engages in the same type of offence again. A number of studies have provided support for the notion of offender consistency. For example, the consistency of burglary behavior. Based on behavioral

'markers' behavioral consistency exists in the crime-scene behaviors of serial rapists, though only to a limited degree. However, the second assumption, referred to as the 'homology problem' presents a significant hurdle for traditional profiling methods. This assumption relies on the hypothesis that the degree of similarity in the offence behavior of any two perpetrators from a given category of crime will match the degree of similarity in their characteristics. Thus, the more similar two offenders are, the higher the resemblance in their behavioral style in the offence.

Actual and potential intersections of psychology and law exist at many levels and, within a particular level, may take different forms. For example, lessons from psychological science may be used to inform legal judgment and decision making; alternatively, legal judgment and decision making may serve to guide empirical research in psychology. Furthermore, within either of these broad levels, the principal psycho legal issue may vary according to substantive topic (e.g., how emotion is conceptualized or what, if any, effect race has on behavioral judgment) or analytic perspective (e.g., how and to what degree empirical science should affect legal processes). As such, any discussion at the interface of psychology and law has the inherent potential of quickly becoming quite complicated. The degree of complication may be managed by clarifying the respective goals of psychology and law, identifying the preferred analytic approach toward understanding how these fields may interrelate, and clearly stating the specific substantive intersection of interest. First, although the respective goals of psychology and law are distinct, it should be understood that they are not entirely unrelated;

in some important ways, they are, or at least have the potential to be, mutually complementary.

In psychology, the goal is to discern, understand, predict, and explain individual differences in behavior and related forms of functioning (e.g., attention, perception, cognition, and emotion). Although psychologists utilize various tools and employ alternative methodologies in the systematic investigation of hypotheses or empirical questions of interest, psychological studies, whether of a correlational or experimental/causal nature, typically examine mean differences between alternative groups of participants or subjects. For example, a study designed to examine differences in reactivity between aggressive and nonaggressive individuals may explore whether there is a statistically significant difference between the two groups' average heart rates when exposed to a mild provocation. In contrast, the goal of the criminal law is to negatively prescribe behavior, judge the wrongfulness and harmfulness of specified forms of conduct, and determine what, if anything, should be the response on the part of the government when it has been determined that criminal wrongdoing has occurred.

Whereas psychology is interested in empirical issues (e.g., does *x* cause *y*?), the criminal law is primarily concerned with normative ones (e.g., is *x* wrong and, if so, what needs to happen to eliminate the moral imbalance caused by *x*?). This is not to say, however, that the law is unconcerned with empirical matters, as much as it is to observe that such matters are often subsidiary. The law has a responsibility to concern itself with empirical matters when determinations of such matters are necessary to make proper

judgments about core normative legal issues. For example, in the case of the crime of passion, the law may consider how wrongful the act is compared to the commission of the same act in cold blood with premeditation. However, the question of what effects high arousal and strong emotion have on individual mental functioning (e.g., control and rationality) is, by its nature, an empirical one. Therefore, the law has a responsibility to draw from scientific research that examines this cause (emotional arousal) and effect (undermined functioning) relation so that it may more properly assess the moral issue of how wrongful the act in question is, as well as the normative question as to what the response on the part of the justice system should be. The idea that the law should draw from psychological science where and when it is faced with an empirical question of a psychological nature reflects a preferable analytic approach in psychology and law and the analytic approach that guides lessons and discussions that we are herewith concerned. Just as it is unwise to attempt to answer questions of morality with science, it is equally wrongheaded to attend to empirical questions with nonscientific methodologies that are traditional to philosophy and the humanities. Rather, a combination of methodologies is required in the case of the normative issue of morality to which empirical matters are of clear relevance. Such cases are not at all uncommon, and the law has, in recent years, become increasingly aware of and attentive to this reality. Questions that are, by their nature, empirical can only be answered via empirical investigation. This makes application of psychology in law a fundamental aspect among the modern legal practitioners. Psychology seeks to explain behavior and the law judges such behavior. The law cannot properly judge behavior unless it has been explained. That is, the law for example,

criminal law has a responsibility to understand that behavior which it is designed to judge. Without recognizing and being informed by the developmental science of antisocial conduct which psychology explores, such a responsibility on the law cannot be fulfilled. Drawing from relevant findings in psychology becomes an absolutely critical step in the legal process.

Psychology of law is very important in human life. Psychology, as a general term, aims at studying and understanding human behavior. It is focused on our thoughts, actions, and the way we interact with each other. A person lying whether on stand while in court or outside court can be detected when psychology is employed. Making an honest and convincing impression is not easy. It requires suppressing nerves effectively, masking evidence of heightened cognitive load, knowledge of how an honest person normally behaves and the ability to show the behavior that is required. Liars' attempts to control their behavior focus on the cultural stereotype of deceptive behavior. For example, if there is a widespread belief that liars look away, increase their movements and stutter, liars will try to maintain eye contact, refrain from making too many movements and speak fluently. When people try to do this, they sometimes tend to over control themselves, resulting in behavior that looks rehearsed and rigid, and speech that sounds too smooth (with few stutters) as a result. There is evidence that liars actually experience the three processes when they lie. (Emotions, content complexity and attempted behavioral control). The fact that deception in itself does not affect someone's behavior, but those behavioral indicators of deception are in reality signs of emotion, content complexity and attempted behavior control, implies that

behavioral cues to deception may become visible only if a liar experiences one of these three processes. When liars do not experience any fear, guilt or excitement (or any other emotion), when the lie is not difficult to fabricate and when liars do not attempt to control their behavior, behavioral cues to deception are unlikely to occur. Most lies in everyday life fall into this category and are therefore unlikely to reveal any behavioral signs. This may be why false beliefs (e.g., misremembering an event) are difficult to detect because here people are not afraid of getting caught (they do not try to hide something), do not experience cognitive load (they have clear, although mistaken, memories of what happened) and do not try hard to make an honest impression (there is no need to, as they believe that they are telling the truth). This may be one reason why in systems where jurors are used, they often over believe eyewitnesses.

The literature reviews have revealed that four behaviors in particular are more likely to occur during deception than while telling the truth: a higher pitched voice, an increase in speech errors (in particular, an increase in word and phrase repetitions), a decrease in illustrators (hand and arm movements designed to modify and/or supplement what is being said verbally) and a decrease in hand/finger movements (movements of hands or fingers without moving the arms). These findings provide support for all three processes. The increase in pitch of voice might be the result of arousal experienced by liars. Perhaps a surprising finding is that liars do not seem to show clear signs of nervousness, such as gaze aversion and fidgeting. At least in white, Western cultures, there is a strong stereotypical belief among observers, including professional lie

catchers, that liars look away and make grooming gestures. Lies may result in fraudulent facial emotional expressions called "micro expressions" which in the face might reveal valuable information about deception. Strongly felt emotions almost automatically activate muscle actions in the face. Anger, for example, results in a narrowing of the lips and lowering of the eyebrows. Eyebrows which are raised and pulled together, and a raised upper eyelid and tensed lower eyelid typically result from fear, and joy activates muscles which pull the lip corners up, bag the skin below the eyes and produce crow's-feet wrinkles beyond the eye corners. A person that denies an emotional state which is actually being felt will have to suppress these facial expressions. Thus, if a scared person claims not to be afraid, that person has to suppress the facial micro expressions which typically relate to fear. This is difficult, especially because these emotions can arise unexpectedly. For instance, people usually do not deliberately choose to become frightened this happens automatically as a result of a particular event that takes place, or as the result of a particular thought. The moment fright occurs; a fearful facial expression may be shown that may give the lie away. People are usually able to suppress these expressions within a quarter of a second after they begin to appear. This is fast, and they can easily be missed by an observer (in fact, observers who blink at the moment the expression occurs will miss it). People can pretend to be angry, whereas in reality they are not angry at all. In order to be convincing, liars should produce an angry facial expression; that is, they should try to narrow their lips. It is also difficult to fake an emotion other than the one which is actually felt. For instance, an adulterous husband may become scared during a conversation with his wife when he realizes she knows something about his affair, but can

decide to mask this emotional state by pretending to be angry with his wife because she apparently does not trust him. In order to be convincing, he therefore has to suppress his fearful facial expression and replace it with an angry facial expression. This is difficult, because he has to lower his eyebrows (sign of anger) whereas his eyebrows naturally tend to raise (sign of fear). These traits of human nature can be determined by a legal practitioner who employs psychology which makes it useful when it comes to closing contractual agreements and Examination of witnesses in courts.

The manipulation of people's perceptions. A man is not only a storehouse of certain knowledge and skills but also a person with his own emotions, feelings, ideas about this world. Today, knowledge of psychology is indispensable either at work or at home. To sell yourself or a product, you need certain knowledge. In order to have wellbeing in the family and be able to resolve conflicts, knowledge of psychology is also necessary.

Understanding the motives of people's behavior, learning to manage their emotions, being able to build relationships, being able to convey their thoughts to the interlocutor - and here psychological knowledge will come to the rescue. Psychology begins where a person appears and, knowing the basics of psychology, many mistakes in life can be avoided. Psychology is thus the ability to live. Lawyers who use psychology understand themselves as well as others around them. They easily analyze others with this skill. They perceive the views, opinions and other information from those whom they wish to influence. Such a skill can be developed independently. To win an argument, speak quickly so that the

opponent has no other option left but to agree with you. If you speak faster, it will give the other person the less time to process what you are saying and they will agree with you. While you should do the opposite in case when the other person agrees with you, speaking slowly is better as it will give them the time to evaluate and analyze what you are saying. Scaring the other people to make them give you what you want and need is one of the psychological tactics employed by lawyers to manipulate people. Anxious people often respond positively to requests afterward as they may be occupied thinking about the danger they are surrounded with. It would make them feel scared and would do as your saying. In addition, sometimes, even if you will not say anything they will understand what you need and do what you would have spoken them to do for you.

Emotional intelligence is an aspect of psychology and has proved to be a valuable tool in adversity as it has the potential of enhancing not only teamwork effectiveness and leadership abilities but it is also an important tool in enhancing personal resilience. The impact of emotional intelligence on the resilience of a person is the ability of that person to cope up with situations that are stressful. It has been clearly demonstrated by research that a person who has got high emotional intelligence usually easily overcome stressors and their negative impacts. Focusing on leadership, a leader is usually expected to have increased responsibilities which usually are accompanied by potential stressors. In such a case, it is important for the person to have strong emotional intelligence in order to be resilient and battle with these stressful conditions. From research where investigations were done into the link existing between emotional intelligence and

stress, it was found out that people who showed high emotional intelligence levels were not negatively affected by stressors.

The application of psychology reveals the hidden character of people which can be used to the advantage of the person using the psychological tactic. When you realize someone may be trying to direct or control a conversation, always ask yourself what he's trying to accomplish. By examining a person's behavior in the context of the broader conversation, you can usually identify his objective. When it isn't crystal clear from your observations alone, a few questions will generally bring the answer to the surface. Even if there is no apparent reason for a person to manipulate a conversation, just the fact that he communicates in a particular way volunteering information about himself, bragging, criticizing, or whatever may have implications about his personality.

No matter how skillful you are at formulating questions, you are bound to run into people who are just as adept at sidestepping them. Some answers seem designed to avoid revealing anything, while others force un related information into the conversation. When you know what to look for, you can tell when someone is leading you toward or away from a particular topic, and why. However, if someone avoids answering several open-ended follow-up questions, you're probably on to something. He might be avoiding embarrassment, conflict, the truth, or an emotionally difficult subject. He might also be intent on talking about something totally unrelated, in which case his non responsiveness usually isn't an evasive tactic. Chances are, once he says what's on his mind, he'll be happy to discuss what's on yours. To determine what's going on,

shift to leading questions or, if necessary, pointed ones. If that still doesn't work, you'll have to try to get the information elsewhere, or abandon the search altogether.

Before you launch into a full-scale assault, however, try to make an educated guess about the reasons for the person's reluctance to answer. Without having at least some sense of his motives, you'll be forging ahead at your own risk. Many people find it insensitive and rude when someone insists on discussing an issue they have plainly tried to avoid. Don't place every person and response under suspicion, but you'd be foolish not to be on the lookout for possible hidden meanings in extra-long responses. To test an unusually long answer, first ask yourself if it's appropriate under the circumstances. Did it answer the question, if in a roundabout way? Or did the person respond like a politician, answering the question he *wished* had been asked? Did he reveal much of himself in the answer, in a candid manner? Did his body language and voice reflect honesty and openness? Suppose you *had* asked for a five-minute response; would his answer have been appropriate? Next, ask yourself whether the answer was coherent, or rambling and disjointed. If it was incoherent, that might be a result of nervousness, social ineptitude, insecurity, or confusion. An answer that's coherent but seemingly uncalled-for may be meant to hide the truth, to control the conversation, to keep the floor in an attempt to push a specific agenda, to buy time to think of what to say, or to impress others. The type of defensiveness that's most difficult to identify is defensive withdrawal. Someone who withdraws when she feels attacked will usually just grow silent. Withdrawal is hard to read; it can reflect not only defensiveness but also boredom, preoccupation, pensiveness, or

even agreement. Usually, the only way to find out which is to ask if "anything is wrong?" or "did I say something that upset you?". The tone and content of the response should provide the answer. If the person is just thinking of something else, he'll usually be quick to volunteer it. However, if he has withdrawn out of defensiveness, you'll probably be met with either an evasive response, or some level of hostility.[11]

Psychology of law involves the use of logic to draw conclusions in arguments. Lawyers make formal arguments in court and elsewhere. A formal argument needs to be consistent with formal logic, and it needs to begin with a base of knowledge and build from there, using the rules of logic or the rules of inference. So, in order to think like a lawyer, you need to know how to think. One of the best responses to any argument, of any kind, is simply to ask, "How do you know?" Putting your opponent to his proof can be an effective strategy. By asking, "How do you know," we are implicitly saying that it is the opponent's job to supply proof rather than our job to supply contradictory evidence. We are implicitly shifting the burden of proof. We need to be careful what we ask because the proponent may be prepared with overwhelming evidence, but, more often than not, there may be gaps in the chain of logic or evidence. Once we find a gap, we just need to attack it until the entire argument falls. Keith Highet, one of the United States' greatest practicing international lawyers, referred to this as the loose thread strategy: pull on it and the fabric of your opponent's argument unravels.

[11] Dark psychology, Robert Dale amazon kindle (2020)

Highet was a bulldog who would clamp the opponent's loose thread in his teeth and pull viciously and happily. Legal practitioners who employ psychology know that small sources of advantage are important. Each of those small sources of advantage makes our chances of winning greater, and if there are a lot of them, they make our chances of winning much greater. Such advantages on a tennis court wouldn't turn me into Novak Djokovic. But they do increase my chances of winning against my likely opponents. And certainly, when the greatest players compete, each seeks every small source of advantage. Lawyers who invoke psychology are always superstars and thus no different. You achieve superstar status by seeking every small source of advantage and assembling these multiple small advantages into dominance. In preparing for an argument for example, the careful lawyer who employs psychology will examine the opponent's chain of syllogisms and determine the level of support for each link. Where there is a weak link of assumption without knowledge, the lawyer will exert pressure.

Psychology plays a key role in framing questions buy lawyers who employ it. The power to frame the question is the power to decide the case. In fact, the framing and reframing of a dispute is an arena in which legal creativity can be most effective and most valuable. A reframing of the dispute is, quite literally, a "game-changer." Therefore, at the moment of definition of the matter in dispute, it is important to think carefully about all of the alternative ways in which a dispute might be framed. Is it a question of property rights or a question of environmental protection? Is it a question of murder or of self-defense? Is it a question of enforcement of contract or one of liability for civil wrongs? When people call a lawyer

"creative," it is often because the lawyer has found a way to place a set of facts in a novel legal frame. These lawyers identify, or invent, a source of leverageа claim of legal right that other had not seen. This is the purpose of psychology in law. It is the advocate's job to examine carefully the factual components of his opponent's claim and to seek to cast doubt on how the facts are assembled to establish the opponent's claim. What are the missing links between the different facts? Where is there doubt about the facts or about the reliability of the evidence for the facts? The evidence may become unreliable if your opponent cannot establish that it was gathered properly or preserved properly. Was it legal to video tape these events? We have a video of the defendant pulling the trigger, but how do we know the gun was loaded or the videotape was produced at the time the victim was shot? Are we sure there was not another shooter? How do we know the videotape was not subject to tampering later? The evidence may be circumstantial, meaning in this context that while the evidence is consistent with your opponent's argument, other possible facts that do not indicate the defendant's responsibility are also consistent with your opponent's argument. Circumstantial evidence is good evidence, but it is not by itself conclusive evidence. One of the essential functions of lawyers is to identify gaps like these in opponents' narratives and to highlight them. It takes a careful, imaginative, and suspicious turn of mind to do it well. Without knowledge of psychology, a lawyer might assert that a particular medicine caused heart disease because nine out of ten patients who took the medicine developed heart disease. But a psychologist might respond that ten patients is too small a sample from which to draw reliable conclusions. Furthermore, we must know more about the samplehow many of them would have

developed heart disease without the medicine? Perhaps the medicine is used as a last-ditch effort to forestall heart disease, given only to those who will certainly develop heart disease without it, and the good news is that it is effective in one of ten patients. The lawyer should know about the rules of inference in the science of psychology and statistics in order to be able to support his argument or at least to anticipate criticisms.

Psychology is the center of thinking before any act can be done. A lawyer who uses psychology thinks a head before getting involved in any obligation. While each of us knows that an apology can salvage a relationship, preempt the urge for revenge, or precipitate forgiveness, lawyers often have a different view. Lawyers are afraid that an apology might be understood as an admission of guilt or responsibility, under circumstances where guilt or responsibility might not otherwise be found. This does not mean that we lawyer and non-lawyers alikeshould never apologize. It does mean that there is an additional consideration that should be addressed prior to making an apology. A lawyer with psychology diagnoses by figuring out why events are happening or have happened. Why is the client more upset over a small problem than a big one? Why exactly is an incorporation not making deliveries on time? In a negotiation, why is the other side unable to see why your proposal is good for both sides? A lawyer with psychology predicts by prophesying how other people will react to events. If the client sues, who will win? How will the other side respond to a negotiation offer you are contemplating making? A lawyer who employs psychology strategizes by developing a plan for solving a problem. When you counsel a client, you will offer several plans as options from which the client can

choose. When you prepare to negotiate, you will develop a strategy for getting the other side to agree, as much as possible, to what your client wants. Psychology of law enables the development of the skill of foreseeing risk predicting now that a problem will arise in the future if something is not done now to prevent it, or at least reduce its harm if it does occur. Some risks are remote. They are so unlikely that effort and client money would be wasted dealing with them now. Accurately assessing the odds of a problem occurring is predictive thinking. For many lawyers, much of any day's work is preventing future problems as well as solving current ones. What would *confirm* that an explanation is accurate (if diagnosing), that a prophesy is likely to happen (if predicting), or that a plan will influence events (if developing a strategy)? Also look for *negative proof* that could eliminate options. What information would show that a diagnosis is inaccurate or that a prophecy is unlikely or that a strategy will probably fail? Ask yourself questions like these: *If my hypothesis is true, what else must also be true (or false)? If my strategy will work, what facts, evidence, or law would already exist (or not)?* For example, if irrational suspicion of other people caused the farmland sellers to doubt the buyer's motives, they would probably have reputations in the local community based on similar incidents in the past. The buyer's lawyer investigated and found that they had no such reputation, which eliminated the irrationality hypothesis. Therefore, their suspicion might have been a rational reaction to what they believed to be the facts. Psychology of law enables the kind of peculiar thinking in terms of what the decision maker requires. During interviewing of clients and witnesses, you have to think in terms of evidence because Judges make their decisions based on the evidence because they can know about a fact only through its proof.

For this reason, lawyers develop an evidentiary instinct: *when someone mentions a fact, a lawyer wants to know what the evidence for it is.* Admissible evidence is evidence that a court will consider. If evidence is inadmissible, it might be probative of something, but the law will ignore it. The rules on admissibility are so complex that virtually the entire law school course called Evidence is devoted to teaching them. A lawyer with psychology learns as much as possible about the judge who will decide the case. The most important information, of course, concerns the judge's judicial philosophy-what it is that leads this particular judge to draw conclusions. Primarily text, or primarily policy? Is the judge strict or lax on stare decisis? Does the judge love or abhor references to legislative history? The best place to get answers to such questions is from the horse's mouth: read the judge's opinions, particularly those dealing with matters relevant to your case. Also read the judge's articles and speeches on relevant subjects. [12]

Psychology enables one to know the plans of the adversary and diagnose the best solution for them. No general engages the enemy without a battle plan based in large part on what the enemy is expected to do. Your case must take into account the points the other side is likely to make. You must have a clear notion of which ones can be swallowed (accepted but shown to be irrelevant) and which must be vigorously countered on the merits. If your brief and argument come first, you must decide which of your adversary's points are so significant that they must be addressed in your opening

[12] Dark psychology, Robert Dale amazon kindle(2020)

presentation and which ones can be left to your reply brief or oral rebuttal. Of course, a principal brief or argument that is all rebuttal is anathema. At the trial stage, you must initially discern your adversary's positions from the pleadings, the conferences, and discovery, and by using psychology. At the appellate stage, you can rely on what was argued and sought to be proved below. Bear in mind, however, that lawyers tend to develop new arguments, and revise their theories, as the case proceeds upward. Constantly ask yourself what *you* would argue if you were on the other side. Don't delude yourself. Try to discern the real argument that an intelligent opponent would make, and don't replace it with a straw man that you can easily dispatch. The most difficult element of oral argument is the unexpected the argument for your adversary or the question from the court that has not been anticipated. It's the supreme talent of the expert oral advocate to be able to respond immediately and accurately to these surprises. But it is a basic skill of the competent oral advocate and a skill we can all master to ensure to the maximum extent possible that surprises don't occur. This means thinking a lot about the case, turning it over in your mind, looking at it from various perspectives, racking your brain not only for the flaws in your adversary's case but also for the weaknesses of your own. It means preparing a defense for each of those weaknesses, even if it can be no more than an acknowledgment of its existence and the assertion that it's outweighed by other considerations. It means preparing for hundreds of different questions even though you may be asked only 20. When psychology permits, put your winning argument up front in your affirmative case. Why? Because first impressions are indelible. Because when the first taste is bad, one is not eager to drink further. Because judicial attention will be highest

at the outset. Because in oral argument, judges' questioning may prevent you from ever getting beyond your first point. It's an age-old rule of advocacy that the first to argue must refute in the middle, not at the beginning or the end. Refuting first puts you in a defensive posture; refuting last leaves the audience focused on your opponent's arguments rather than your own. So, for the first to argue, refutation belongs in the middle. Aristotle observed that in court one must begin by giving one's own proofs, and then meet those of the opposition by dissolving them and tearing them up before they are made if one speaks second, one must first address the opposite argument, refuting it and anti-syllogizing, and especially if it has gone down well; for just as the mind does not accept a subject of prejudice in advance, in the same way neither does it accept a speech if the opponent seems to have spoken well. One must therefore make space in the listener for the speech to come; and this will be done by demolishing the opponent's case; thus, having put up a fight against either all or the greatest or most specious or easily refuted points of the opponent, one should move on to one's own persuasive points If an opponent has said something that seems compelling, you must quickly demolish that position to make space for your own argument. Cultivate a tone of civility, showing that you are not blinded by passion. Don't accuse opposing counsel of chicanery or bad faith, even if there is some evidence of it. Your poker-faced public presumption must always be that an adversary has misspoken or has inadvertently erred not that the adversary has deliberately tried to mislead the court. It's imperative. As an astute observer on the trial bench puts it: "An attack on opposing counsel undercuts the persuasive force of any legal argument. The practice is uncalled for, unpleasant, and ineffective. This advice applies

especially against casting in pejorative terms something that opposing counsel was fully entitled to do."

A lawyer who employs psychology knows when and how to conclude his or her oral arguments. Persuasive argument neither comes to an abrupt halt nor trails off in a grab-bag of minor points. The art of rhetoric features what is known as the peroration the conclusion of argument, which is meant to *love* the listener to act on what the preceding argument has logically described. The concluding paragraph of a legal argument cannot, of course, be as emotional as the peroration of Cicero's first oration against Cataline. But it should perform the same function appropriately for the differing context. It should briefly call to the reader's or listener's mind the principal arguments made earlier and then describe why the rule of law established by those arguments must be vindicated because, for example, any other disposition would leave the bar and the lower courts in uncertainty and confusion, or would facilitate fraud, or would flood the courts with frivolous litigation and so on. Common law judges and modern rules committees take on the role of amateur applied psychologists. They employ what they think they know about the ability and motivations of witnesses to perceive and retrieve information, about the effects of the litigation process on testimony and other evidence, and the capacity of jurors to comprehend and evaluate evidence. These are the same kinds of phenomena that cognitive and social psychologists systematically study. Psychology calls for narrating of persuasive stories during the trial, a good story teller is a good lawyer. Psychology entails making a narrative move. the narrative must be directed toward a culminationsome ending or termination (either restorative or

transformative) that the sequence of events anticipates. The story from a legal storyteller is systematically anchored in the theory of the case in addition to an aesthetically satisfying narrative theme. the narrative must satisfy the legal elements presented in the theory of the case. Often, the legal storyteller will stop the narrative and step outside the story, purposefully zigzagging from the story to the theory of the case to reveal specifically how a particular sequence of the narrative events satisfies specific elements of legal theory of the case. Spence, for example, is extremely adept at moving from his narrative to his theory of the case, repeating a shorthand phrase or referencing how a piece of the story connects with or fulfills a crucial component of his legal theory, and then returning to the story. He internalizes a psychological awareness of his audience's imaginative attention and artfully maintains his place in the progress of the plot, maintaining his listener's attention and avoiding gaps in the narrative logic of the story. He walks tightropes of language and imagery and emotion; nevertheless, it is the preference of the plot of a well-shaped and carefully pre-established story structure that ultimately determines the success of his closing argument. Neurology and behavioral psychology may suggest that in "real life" actions are often largely determined and shaped by external forces and environments rather than by the internal attributes of the actors, and that the choices are compelled by circumstances and not made exclusively by autonomous actors who must assume complete personal responsibility for their actions. This is a type of narrative framing that some attorneys may occasionally employ to persuade judges. For example, in death penalty mitigation arguments, attorneys often employ stories explaining how a convicted defendant was a victim himself of "environmental" causes or human

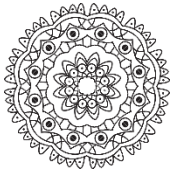
"ecology" (e.g., a backstory of horrific childhood psychological abuse, a distressing and inescapable personal situation, etc.) that helps explain, but never justifies, the acts committed by the convicted defendant. Consequently, the audience is urged to have some sympathy for the convicted at sentencing; the punishment should be mitigated and the defendant spared the death penalty. The story is connected to specific elements of the applicable legal rules, typically statutorily identified mitigating factors or circumstances.[13]

Psychology permits and calls for preparation of witnesses during examinations in order to cultivate the end point which is favorable to the case. Lawyers need to not only prepare their witnesses for direct examination but also for cross-examination. In rape cases, it is important to know the physical evidence because that can determine the questions for cross-examination. For example, if there is no DNA evidence left inside the female victim and none was collected from the sexual assault kit, the cross-examiner may use that lack of evidence to argue that there was no intercourse. But the truth may beas it was in this casethat the male was interrupted by the police before he could ejaculate inside the victim. While defense attorneys may use this lack of DNA evidence as a strategy, it is not the victim's fault that there isn't any physical evidence from the sexual assault kit. Instead, there may be other evidence such as ripped clothing, bite marks, or fingerprints. When a witness gets flustered and starts to cry, during the examination a lawyer with psychology walks right up to the witness stand to comfort him or her. This act reassures the

[13] Dark psychology, Robert Dale amazon kindle(2020)

witness and shows the bench that the lawyer cares about the witness. Many attorneys make the callous mistake of simply waiting for their witness to stop crying and then they continue on with the direct matter-of-factly as if nothing ever happened.

Psychology and Law



I have sometimes heard people say that magistrates are psychologists. But what I think they mean to say is that magistrates should be psychologists, for few magistrates have read psychology as a subject.

Law and psychology are two separate disciplines, but they have much in common. While the goal of psychology is to understand the behavior and the purpose of the law to control it, both fields establish norms about people's causes. This means that those interested in the study of human behavior should not limit themselves to considering careers that, at first glance, do not seem to be relevant to psychology. The field of psychology and law uses resources and research methods and findings of social psychology and cognitive psychology, developmental psychology and clinical psychology to examine legal assumptions to evaluate whether they truly work or not and think in ways to expand them. (Sales & Krauss, 2015).

Psychology is considered as the science of studying mental aspect which ascertains the human behavior. However, the application of psychology in the legal world deals with ascertaining various factors such as the *mens rea* in the crime, authenticity of the witness and most importantly the type of punishment which shall be granted as it is based on several factors such as the mental agony caused to the

victim in the circumstances of rape cases, accidents caused in motor vehicles accident, etc. and various mitigation and aggravating factors which led accused to commit a crime helping the courts to reach to conclusion which is righteous and provides fair justice to the victims. Thus, the widely used field of psychology which is employed in the law includes social, developmental, cognitive and clinical aspects of psychology. However, it contains certain limitations such as psychology is a field of science that does not grant certainty while law requires certainty having restricted application in family, criminal laws matter, etc. Also, the task of a psychologist is to act as an amicus brief but in some instances, due to lack of training, amicus brief is just called to cite and support personal opinion of a psychologist.[14]

Even the *"American Society of Law and Psychology"* suggests that the application of psychology in the field of law consists of implementation of clinical specialties in legal world on those people who come in with the interaction of such laws. Thus, legal psychology deals with social and cognitive principles which have been widely used in the areas of research and academics to perform empirical research on the upcoming legal issues. Also, most of the psychologist's function as an advisory and even as a trial consultant in the courts to help the Judges to reach out to conclusions. Not only this, as such study is based on empirical research, most of the times, they are called by the lawmakers during the crises to clear their doubts and establish the technical policies. Also, psychologists are

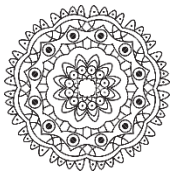
[14] Dark psychology, Robert Dale amazon kindle(2020)

called by the Courts to give their testimony as legal experts under the Indian Evidence Act, 1872, for instance, the task of a forensic psychologist is to examine the memory of a witness whereas, on the other hand, a forensic psychologist helps to determine the proficiency of a defendant. Thus, though law and psychology are two distinct concepts but its application in the field of law is quite advantageous.

There is also another concept of psychology which has been widely applied in law which is termed as 'forensic psychology' that is applying such concept to comprehend the crimes, thus, including a clinical specialties' in the committed crimes. Forensic psychology helps to ascertain one's mental condition with respect to proving insanity as in most of the cases people claim it safeguard themselves. It also helps in determining the harmfulness or the risk associated with the person such as in the cases when the accused after completing his punishment is set free, he might be still harmful for the society. Moreover, they play a great role in cases of divorce or child custody, as in such cases the future of a child or the spouse is at a risk, therefore, they review their behavior and submit their findings to the Judge. Last but not least, since the trial procedure is exhausting and lengthy, the forensic psychologist may recommend a person for any psychiatric treatment required.[15]

[15] See lawbhoomi.com

Theories and Models of Justice in Ration to Psychology



The models of justice in relation to psychology

They are the goal model and the functional-systems model (1960). The former, he argues, is an approach which is concerned primarily with "organizational effectiveness," in which the criteria for the assessment of effectiveness are derived from organizational goals (Etzioni, 1960: 257).

Thus, the announced public goals of an organization are usually regarded as the "source for standards by which actors assess the success of their organization" (Etzioni, 1960: 257). This approach, its adherents claim, facilitates an "objective" analysis because it does not insert the observer's own values, but takes the "values," i.e., the goals, of the organization as the fixed criteria of judgment. On the other hand, Etzioni (1960: 259) identifies what he has termed the functional-systems model of organizational analysis.

The key difference between the models, Etzioni argues, is that the latter approach is more open-ended in its analysis of the function and "needs" of an organization than is the former, and the researcher is

likely to be more attentive to a wide range of influencing factors and as a result apt to show a less biased point of view.

The rational-goal model

There is a large body of research focusing primarily upon means or formal goals of the administration of criminal justice. The common theme under this model is the primary concern with formal rules. It entails the logical analysis of the inter-relationship of the rules of criminal procedure in order to identify and overcome problems of ambiguity, fairness, and discretion. Another form of research this model uses is the empirical description of practices in the administration of justice, which is then contrasted to the formal rules and goals of the system in an attempt to identify and measure discrepancies between reality and ideal.

Functional systems model

Under the functional-systems model, a substantially different conception of organization is employed. A different set of practices tends to be focused on, and there is a far greater and explicit concern for "explaining" the behavior of the actors (as opposed to simply "contrasting" it). Etzioni has lumped together a wide variety of studies under the rubric of systems models, and here too, there is a wide variation in the approaches to the analysis of criminal justice which I have placed in this category.[16] There are, however, a number of common and distinguishing characteristics and assumptions

[16] Dark psychology, Robert Dale amazon kindle(2020)

which are shared by most of them. They all tend to view the organization of the administration of criminal justice as a system of action based primarily upon cooperation, exchange, and adaptation, and emphasize these considerations over adherence to formal rules and defined "roles" in searching for and developing explanations of behavior and discussing organizational effectiveness. Rather than being the primary focus of attention, formal "rules" and "disinterested professionalism" are viewed as only one set of the many factors shaping and controlling individuals' decisions, and perhaps not the most important ones. The efficacious "rules" followed by the actors are not necessarily the ideal, professional rules; and the goals they pursue are not necessarily the formal "organizational" goals posited by the researcher or even the "public" goals posited by the leaders of the organization. Rather the "rules" the organization members are likely to follow are the "folkways" or informal "rules of the game" within the organization; the goals they pursue are likely to be personal or sub-group goals; and the roles they assume are likely to be defined by the functional adaptation of these two factors. These three features of the organization then are the objects to be accounted for, and the functional-systems approach is likely to begin to identify and examine the adaptation of the actors to the environment, the workload and the interests of the persons placed within the system, i.e., other goals of the actors within the organization.[17]

[17]Hein Online -- 7 Law & Soc'y Rev. 426 1972-1973

THE THEORIES OF JUSTICE IN RELATION TO PSYCHOLOGY

The three major criminal theories have emerged after decades of research on the criminal mind. The psychodynamic theory centers on a person's early childhood experience and how it influences the likelihood for committing crime. However, rather than focus on the biological basis of crime, psychologists focus on how mental processes impact individual propensities for violence. Psychologists are often interested in the association between learning, intelligence, and personality and aggressive behavior and briefly below is a review of some of the major psychological perspectives that have attempted to explain violent behavior. These perspectives include the psychodynamic perspective, behavioral theory, cognitive theory and personality theory. The psychodynamic theory centers on a person's early childhood experience and how it influences the likelihood for committing crime. Behavioral theory focuses on how perception of the world influences behavior. And cognitive theory focuses on the way how people manifest their perceptions thus leading to a life of crime. [18]

Psychodynamic Theory

This theory largely comes to us from the mind of noted psychologist Sigmund Freud. He argued that everyone has instinctual drives (called the "id") that demand gratification. Moral and ethical codes

[18] APA. (2019). Law & Psychology. Retrieved from https://www.apa.org/topics/law/

(called the "superego") regulate these drives, and adults later develop a rational personality (called the "ego") that mediates between the id and superego. Based on this idea, criminal behavior is seen primarily as a failure of the superego. More generally, psychodynamic theory sees criminal behavior as a conflict between the id, ego and superego. This conflict can lead to people developing problematic behavior and delinquency. The challenge with this theory is it is difficult to test. The psychodynamic perspective is largely based on the groundbreaking ideas of Sigmund Freud. It is sufficient to note that Freud thought that human behavior, including violent behavior, was the product of "unconscious" forces operating within a person's mind. Freud also felt that early childhood experiences had a profound impact on adolescent and adult behavior. Freud, for example, believed that conflicts that occur at various psychosexual stages of development might impact an individual's ability to operate normally as an adult [19]. For Freud, aggression was thus a basic (id based) human impulse that is repressed in well-adjusted people who have experienced a normal childhood. However, if the aggressive impulse is not controlled, or is repressed to an unusual degree, some aggression can "leak out" of the unconscious and a person can engage in random acts of violence. Freud referred to this as "displaced aggression" [20]. It is interesting to note that Freud himself did not theorize much about crime or violence. The psychoanalyst who is perhaps most closely associated with the study of criminality

[19] Bartol, Curt. (2002). Criminal Behavior: A Psychological Approach. Upper Saddle River, NJ: Prentice-Hall.

[20] Englander, Elizabeth. (2007). Understanding Violence (3rd ed.). Mahwah, NJ: Lawrence Erlbaum Associates.

is August Aichorn. Unlike many of the sociologists of his day, Aichorn felt that exposure to stressful social environments did not automatically produce crime or violence. After all, most people are exposed to extreme stress and do not engage in serious forms of criminality. Aichorn felt that stress only produced crime in those who had a particular mental state known as latent delinquency. Latent delinquency, according to Aichorn, results from inadequate childhood socialization and manifests itself in the need for immediate gratification (impulsivity), a lack of empathy for others, and the inability to feel guilt[21]. Since Aichorn's early work, psychoanalysts have come to view violent criminals as "iddominated" individuals who are unable to control their impulsive, pleasure-seeking drives, often because of childhood neglect or abuse, violence-prone individuals suffer from weak or damaged "egos" that render them unable to deal with stressful circumstances within conventional society. It is also argued that youth with weak egos are immature and easily led into crime and violence by deviant peers[22]. In their most extreme form, underdeveloped egos (or superegos) can lead to "psychosis" and the inability to feel sympathy for the victims of crime [23]. In sum, psychodynamic theories depict the violent offender as an impulsive, easily frustrated person who is dominated by events or issues that occurred in early childhood. However, this is subject to significant criticism, the psycho-analytic perspective is that it is based on

[21] Aichorn, August. (1935). Wayward Youth. New York: Viking Press.

[22] Andrews and Bonta, 1994 The Psychology of Criminal Conduct. Cincinnati: Anderson.

[23] see DiNapoli, 2002; Seigel and McCormick, 2006

information derived from therapists' subjective interpretations of interviews with a very small number of patients In other words, the theory has not yet been subject to rigorous scientific verification. Nonetheless, it is important to stress that basic psychodynamic principles have had a major impact on the subsequent development of criminological thought. For example, many other theories of violence have come to stress the importance of the family and early childhood experiences. Similarly, a number of sociological and criminological theories stress that violent criminals are impulsive and lack empathy for others.[24]

Behavioral Theory

This theory revolves around the idea that human behavior develops through experience. Specifically, behavioral theory focuses on the idea that people develop their behavior based on the reaction their behavior gets from those around them. This is a form of conditioning, where behavior is learned and reinforced by rewards or punishment.

So, if a person is in the company of those who condone and even reward criminal behavior – especially a figure of authority – then they will continue to engage in that behavior. For example, social learning theorist Albert Bandura maintains individuals are not born with an innate ability to act violently. He instead suggests people learn violent behavior through observing others. Typically, this comes from three sources: family, environmental experiences and

[24] Dark psychology, Robert Dale amazon kindle(2020)

the mass media. Behavior theory maintains that all human behavior including violent behavior is learned through interaction with the social environment. Behaviorists argue that people are not born with a violent disposition. Rather, they learn to think and act violently as a result of their day-to-day experiences [25].These experiences, proponents of the behaviorists tradition maintain, might include observing friends or family being rewarded for violent behavior, or even observing the glorification of violence in the media. Studies of family life, for example, show that aggressive children often model the violent behaviors of their parents. Studies have also found that people who live in violent communities learn to model the aggressive behavior of their neighbors

Behavioral theorists have argued that the following four factors help produce violence:

1) A stressful event or stimulus like a threat, challenge or assault that heightens arousal.

2) A aggressive skills or techniques learned through observing others.

3) A belief that aggression or violence will be socially rewarded by, for example, reducing frustration, enhancing self-esteem, providing material goods or earning the praise of other people.

4) A value system that condones violent acts within certain social contexts. Early empirical tests of these four principles were promising. As a result, behavioral theory directly contributed to the

[25] Bandura, Albert. (1977). Social Learning Theory. Englewood Cliffs, NJ: Prentice-Hall

development of social learning theories of deviance (differential association theory, sub-cultural theory, neutralization theory, etc.). These theories, among the most important and influential of all criminological theories, are subject to a detailed discussion as well per this edition.

Cognitive Theory

Investigates all aspects of cognition; memory, thinking, reasoning, language, decision making. For example, cognitive psychologists have recently found evidence suggesting that the reason we cannot remember events that happen to us before we are about three years old is that we lack clearly developed self-concept of this age (Howe and Courage, 1993).

Cognitive theory focuses on how people perceive the world and how this perception governs their actions, thoughts and emotions. Most cognitive theorists break down the process into three levels of what is called "moral development."

a) Pre-conventional level. This involves children and how they learn the external consequences of their actions.

b) Conventional level. This involves teens and young adults, who begin to base behavior on society's views and expectations.

c) Post-conventional level. In those over the age of 20, the focus is more on judging the moral worth of societal values and rules and how they relate to values of liberty, human welfare and human rights

In the area of crime, cognitive theorists argue that criminals do not develop moral judgment beyond a pre-conventional level.

Cognitive theorists focus on how people perceive their social environment and learn to solve problems. The moral and intellectual development perspective is the branch of cognitive theory that is most associated with the study of crime and violence. Piaget in 1932 was one of the first psychologists to argue that people's reasoning abilities develop in an orderly and logical fashion. He argued that, during the first stage of development (the sensor-motor stage), children respond to their social environment in a simple fashion by focusing their attention on interesting objects and developing their motor skills. By the final stage of the development (the formal operations stage), children have developed into mature adults who are capable of complex reasoning and abstract thought.

Kohlberg in1969 applied the concept of moral development to the study of criminal behavior. He argued that all people travel through six different stages of moral development. At the first stage, people only obey the law because they are afraid of punishment. By the sixth stage, however, people obey the law because it is an assumed obligation and because they believe in the universal principles of justice, equity, and respect for others.

In his research, Kohlberg found that violent youth were significantly lower in their moral development than non-violent youth. Even after controlling for social background Kohlberg et al, since his pioneering efforts, studies have consistently found that people who obey the law simply to avoid punishment (i.e., out of self-interest) are more likely to commit acts of violence than are people who

recognize and sympathize with the fundamental rights of others. Higher levels of moral reasoning, on the other hand, are associated with acts of altruism, generosity and non-violence. In sum, the weight of the evidence suggests that people with lower levels of moral reasoning will engage in crime and violence when they think they can get away with it. On the other hand, even when presented with the opportunity, people with higher levels of moral reasoning will refrain from criminal behavior because they think it is wrong.[26]Another area of cognitive theory that has received considerable attention from violence researchers involves the study of information processing. Psychological research suggests that when people make decisions, they engage in a series of complex thought processes. First, they encode and interpret the information or stimuli they are presented with, then they search for a proper response or appropriate action, and finally, they act on their decision[27]. According to information processing theorists, violent individuals may be using information incorrectly when they make their decisions. Violence-prone youth, for example, may see people as more threatening or aggressive than they actually are. This may cause some youth to react with violence at the slightest provocation. According to this perspective, aggressive children are more vigilant and suspicious than normal youth are – a factor that greatly increases their likelihood of engaging in violent behavior. Consistent with this perspective, research suggests that some youth who engage in violent

[26] Dark psychology, Robert Dale amazon kindle(2020)

[27] Dodge, K. (1986). A social information processing model of social competence in children. Minnesota Symposium in Child Psychology, 8, 77–125.

attacks on others actually believe that they are defending themselves, even when they have totally misinterpreted the level of threat[28]. Recent research also indicates that male rapists often have little sympathy for their own victims, but do in fact empathize with the female victims of other sexual offenders. This finding suggests that, because of information processing issues, some offenders can't recognize the harm they are doing to others.

All three of these criminology theories undergo constant scrutiny and revision, but they provide the foundations upon which current ideas are based. These theories are one of the most interesting aspects of criminology learned by those who enter a criminal justice degree program. Where on one hand, forensic psychology provides knowledge about the mental state of accused and witness and also provides information regarding the treatment of those mentally ill accused; on the other hand, the legal psychologists in the form of researchers and academicians help in developing the legal system by providing new perspectives to legal issues and by providing different solutions to it.

The role which psychology plays in the legal system modifies our legal system and helps in maintaining justice, equity and good conscience.

Psychology pre-law teaches students about human behavior and judgment. This research-based degree also focuses on interpreting

[28] Lochman, J. (1987). Self and peer perceptions of attributional biases of aggressive and non-aggressive boys in dyadic interactions. Journal of Consulting and Clinical Psychology, 55, 404–410.

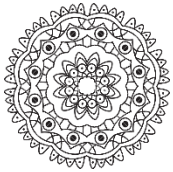
and analyzing research findings. Specific lessons vary with each program, but many psychology degrees cover cognitive, behavioral, personality, social, and clinical psychology. Some schools offer psychology degrees with a concentration in pre-law.

Psychology has been defined as a science which studies the mental aspect that determines human behavior. In short, it studies the human mind and its effects on human behavior. This includes conative, cognitive and affective aspects. Psychological studies cover the conscious and unconscious states of mind. Over time, many things have been included under the ambit of psychology.

In the legal realm, it is helpful in determining the veracity of witnesses, mens rea of a criminal while committing the crime and above all, what punishment should be granted to a person keeping in mind his psychological frame of mind. Psychology to some extent has started seeing a criminal as a person having a mental disorder and therefore suggests that such persons should not be punished and should rather be medically treated.

Expert witnesses also easily identified as legal psychologists are well trained to handle legal issues even though they have formal training. They are helpful in testifying the witnesses. they also test the memory of eye witnesses whereas the forensicpsychology

Biopsychology of Cross Examination



The main purposes of cross-examination are to elicit favorable facts from the witness, or to impeach the credibility of the testifying witness to lessen the weight of unfavorable testimony. Cross-examination frequently produces critical evidence in trials, especially if a witness contradicts previous testimony. In legal psychology, cross-examination is the interrogation of a witness called by one's opponent. It is preceded by direct examination, also known as examination-in-chief and may be followed by a redirect re-examination.MIt is a procedure in which psychological factors can play an important role.

Variations by jurisdiction

In most jurisdictions, during court proceedings, cross-examining attorney is typically not permitted to ask questions that do not pertain to the testimony offered during direct examination, but most courts do permit a lawyer to cross-examine a witness on matters not raised during direct examination. Similarly, courts in some jurisdictions allow a cross-examiner to exceed the scope of direct examination.

Since a witness called by the opposing party is presumed to be hostile, cross-examination does permit leading questions. A witness

called by the direct examiner, on the other hand, may only be treated as hostile by that examiner after being permitted to do so by the judge, at the request of that examiner and as a result of the witness being openly antagonistic and/or prejudiced against the opposing party.[29]

The main purposes of cross-examination are to elicit favorable facts from the witness, or to impeach the credibility of the testifying witness to lessen the weight of unfavorable testimony. Cross-examination frequently produces critical evidence in trials, especially if a witness contradicts previous testimony. The advocate Edward Marshall-Hall built his career on cross-examination that often involved histrionic outbursts designed to sway jurors. Most experienced and skilled cross-examiners however, refrain from caustic or abrasive cross-examination so as to avoid alienating jurors. John Mortimer, Queen's Counsel, observed that "cross-examination" was not the art of examining crossly. Indeed the good cross-examiner gets a witness to assert to a series of linked propositions culminating in one that undermines that witnesses' evidence rather than pursuing an antagonistic approach.

Art of cross-examination

Cross-examination is considered an essential component of a trial because of the impact it has on the opinions of the judge. Few lawyers practice trial law or complex litigation and typically refer

[29] (Ehrhardt, Charles W. and Stephanie J. Young, "Using Leading Questions During Direct Examination", Florida State University Law Review, 1996. Accessed November 26, 2008.)

such cases to those who have the time, resources and experience to handle a complex trial and the commitment involved to complete a trial successfully. Few attorneys get the practice necessary to develop the techniques needed to do an effective job cross-examining a witness.

It is sometimes referred to as an art form, because of the need for an attorney to know precisely how to elicit the testimony from the opposing witness that will help, not hinder, their client's case. Typically a cross-examiner must not only be effective at getting the witness to reveal the truth, but in most cases to reveal confusion as to the facts such as time, dates, people, places, wording etc. More often than not a cross-examiner will also attempt to undermine the credibility of a witness if he will not be perceived to be a bully (such as discrediting a very elderly person or young child).

The cross-examiner often needs to discredit a potentially biased or damaging witness in the eyes of the judge without appearing to be doing so in an unfair way. Typically the cross-examiner must appear friendly, talk softly and sincerely to relax the guarded witness. They typically begin repeating similar basic questions in a variety of different ways to get different responses, which will then be used against the witness as misstatements of fact later when the attorney wants to make their point. If it is too obvious the questions are too clearly repetitive and making the witness nervous, the other attorney may accuse the cross examiner of badgering the witness. There is a fine line between badgering and getting the witness to restate facts differently that is typically pursued.

The less the witness says, and the slower the witness speaks, the more control they can maintain under the pressure of a crafty opponent. The key for a witness is to understand the facts that they believe to be the case and not add additional thoughts to those facts, lest they be used to undermine the testimony. Sticking to the brief known facts is key for the witness, making it difficult for the cross-examiner to make the witness appear confused, biased or deceitful. The cross examiner will assume the witness has been told that and begin asking supporting questions about where the witness was, what time it was, what the witness saw, what they said, and sooner or later upon asking again the witness may use a different word that will give the cross-examiner a chance to ask the question again doubtfully and pointedly implying contradiction. The witness will try typically to explain and clarify, which sometimes reveals weakness in the witness's statements of fact. Other times the witness is just being truthful but undermined for the purpose of casting doubt to the judge.

There is a measure of drama that cross-examination adds to any trial because of the challenging of the statements made by a witness. In the 1903 book titled The Art of Cross-Examination by Francis L. Wellmann much effort is devoted to highlighting components of cross-examination and the impact on trials of the past century. An example of an inflammatory way a question will be asked by a cross-examiner to a witness he was trying to undermine would be "What is your recollection today?" implying it was stated differently yesterday. Simply the accent of syllables can leave a bewildered judge believing they must put their guard up with a witness–or in some cases the cross-examiner if they are not careful. The book freely uses

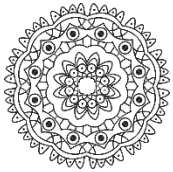
accenting in its dialogue to give the reader such insight as to how cross-examiners rattle witnesses to obtain their desired effect for the judge.

Affecting the outcome of trials

Cross-examination is a key component in a trial. The opinions by a judge are often changed during cross examination if doubt is cast on the witness. In other times a credible witness affirms the belief in their original statements or in some cases enhances the judge's belief. Though the closing argument is often considered the deciding moment of a trial, effective cross-examination wins trials.[30] Typically during an attorney's closing argument they will repeat any admissions made by witnesses that favor their case. Indeed, in Uganda, cross-examination is seen as a core part of the entire adversarial system of justice, in that it "is the principal means by which the believability of a witness and the truth of his testimony are tested."[31] So while there are many factors affecting the outcome of a trial, the cross-examination of a witness will often have an impact on an open minded unbiased judge searching for the certainty of facts upon which to base their decision.

[30] http://www.relentlessdefense.com/relentless-criminal-cross-examination.html
[31] Davis v. Alaska, 415 U.S. 308 (1974)

Personality and Violence



The psychological concept of "personality" has been defined as stable patterns of behavior, thoughts or actions that distinguish one person from another. A number of early criminologists argued that certain personality types are more prone to criminal behavior. The Greeks for example, identified a number of personality traits that they felt were associated with violence, including self-assertiveness, defiance, extroversion, narcissism and suspicion. More recently, researchers have linked violent behaviors to traits such as hostility, egoism, self-centeredness, spitefulness, jealousy, and indifference to or lack of empathy for others. Criminals have also been found to lack ambition and perseverance, to have difficulty controlling their tempers and other impulses, and to be more likely than conventional people are to hold unconventional beliefs.[32]

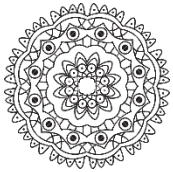
The Multiphasic Personality Inventory (MMPI) and the Multidimensional Personality Questionnaire (MPQ) have frequently been used to assess the personality characteristics of young people. The use of these scales has consistently produced a statistically significant relationship between certain personality

[32] Atkins, 2007; Caparra et al., 2007; Costello and Dunaway 2003; Johnson et al., 2000; Sutherland and Shepard, 2002; Miller and Lyman, 2001

characteristics and criminal behavior. Adolescents who are prone to violence typically respond to frustrating events or situations with strong negative emotions. They often feel stressed, anxious and irritable in the face of adverse social conditions. Psychological testing also suggests that crime-prone youth are also impulsive, paranoid, aggressive, hostile, and quick to take action against perceived threats.

There is considerable debate about the causal direction of the personality-violence association. On the one hand, some scholars have argued that there is a direct causal link between certain personality traits and criminal behavior. However, others maintain that personality characteristics interact with other factors to produce crime and violence. For example, defiant, impulsive youth often have less-than-stellar educational and work histories. Poor education and employment histories subsequently block opportunities for economic success. These blocked opportunities, in turn, lead to frustration, deprivation, and ultimately, criminal activity.

Psychopathy and Violence



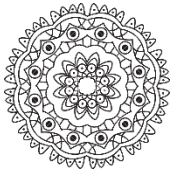
Research suggests that some serious violent offenders may have a serious personality defect commonly known as psychopathy, sociopathy or anti-social personality disorder. Psychopaths are impulsive, have low levels of guilt and frequently violate the rights of others. They have been described as egocentric, manipulative, cold-hearted, forceful, and incapable of feeling anxiety or remorse over their violent actions. Psychopaths are also said to be able to justify their actions to themselves so that they always appear to be reasonable and justified.[33] Considering these negative personality traits, it is perhaps not surprising that recent studies show that psychopaths are significantly more prone to violence compared with the normal population. Furthermore, the research evidence also suggests that psychopaths often continue with their criminal careers long after others have aged out of crime. It has been estimated that approximately most of all prison inmates are psychopaths. However, psychopaths are particularly over-represented among chronic offenders. Indeed, it is estimated that up to 80 per cent of chronic offenders exhibit psychopathic personalities. In sum, research

[33] APA. (2019). Law & Psychology. Retrieved from https://www.apa.org/topics/law/

suggests that psychopaths have a significantly higher likelihood of violence than others do. However, experts also stress that not all psychopaths become violent. In fact, the majority of people convicted of violent crimes do not have a psychopathic personality.

A meta-analysis conducted by Eden's and his colleagues (2007) summarizes juvenile recidivism data in relation to psychopathology. The authors searched and coded both published and unpublished studies completed between 1990 and 2005. The studies they reviewed include an even split sample. The results of their ambitious project reveal that a juvenile diagnosis for psychopathy is a strong predictor of future violence in adulthood. The findings further demonstrate that psychopathy is significantly related to both general and violent recidivism, but only weakly associated with sexual recidivism. Interestingly, the data also reveal that psychopathy is a weaker predictor of violent recidivism among more racially diverse samples. Psychologists think that a number of early childhood factors might contribute to the development of a psychopathic or sociopathic personality. These factors include having an emotionally unstable parent, parental rejection, lack of love during childhood and inconsistent discipline. Young children – in the first three years of life – who do not have the opportunity to emotionally bond with their mothers, experience a sudden separation from their mothers, or see changes in their mother figures are at particularly high risk of developing a psychopathic personality.

Intelligence and Violence.



Another major area of psychological inquiry involves the possible relationship between intelligence and crime. Criminologists working in the early 20th century often argued that intelligence is strongly associated with criminal behavior. People with low intelligence, they argued, were much more likely to engage in crime and violence than people with high intelligence were. Support for this hypothesis was garnered from studies that directly compared the IQ scores of adolescents with IQ scores derived from the general population. In general, these pioneering studies reported that the IQ scores of delinquents were significantly lower than the IQ scores of normal controls[34].

Simplistic notions that low intelligence causes crime and delinquency often led to disastrous results. For example, in the 1920s, the governments of British Columbia and Alberta passed "negative eugenics" laws that called for the sterilization of people thought to possess low intelligence or other negative psychological characteristics. It is important note that, but for the disapproval of

[34] Goddard, Henry. (1920). Efficiency and Levels of Intelligence. Princeton: Princeton University Press.

the Catholic church, such sterilization laws would also have come into effect in both Ontario and Quebec.

Under such laws, which remained in effect until the 1970s, over 5,000 people in Canada were approved for sterilization. Most of these people were arbitrarily diagnosed as having "mental defects." Finally, in 1999, the courts decided that the Alberta and BC governments had acted falsely and victims subsequently agreed to an $82 million.

Understanding Intelligence

Intelligence analysis is the application of individual and collective cognitive methods to weigh data and test hypotheses within a secret socio-cultural context. The descriptions are drawn from what may only be available in the form of deliberately deceptive information; the analyst must correlate the similarities among deceptions and extract a common truth.

According to Psychologists, there are four types of Intelligence

1) Intelligence Quotient (IQ);

2) Emotional Quotient (EQ);

3) Social Quotient (SQ); and

4) Adversity Quotient (AQ).

Intelligence Quotient (IQ)

This is the measure of your level of comprehension. You need IQ to solve math, memorize things, and recall lessons.

Since the 19th century, IQ tests have been the gold standard for determining a person's level of intelligence. It is determined using the formula "ratio of mental age to chronological age times 100," which was created by German psychologist William Stern. A 160 IQ score is considered to represent only 2% of the world's population, and was shared by scientists like Stephen Hawking and Albert Einstein. IQ has grown to be a source of pride throughout time. It has been a persistent factor in hiring and academic evaluation. However, since times and demands have changed, it has also been made sure that before the hiring process is complete, other quotients are taken into account as well.

Emotional Quotient (EQ)

This is the measure of your ability to maintain peace with others, keep to time, be responsible, be honest, respect boundaries, be humble, genuine and considerate. EQ is the capacity to comprehend both your own emotions and those of others. It then acts as a compass for shaping one's mental process, behaviour, and interpersonal interactions. American psychologists John D. Mayer and Peter Salovey created the foundation for it, which helped it acquire popularity in the 1990s. Daniel Goleman argued for this even more in his 1995 book Emotional Intelligence. Like IQ, a person's emotional intelligence is not innate. As an alternative, it can be learned like a skill set. People that use EQ in their daily lives are more sincere and empathic. When working with various coworkers, their adaptable communication style is helpful. Being considerate

helps you become a more likeable person when you make yourself emotionally available to another person. Juniors will be more eager to comply with instructions, and seniors are more likely to pay attention to your point of view. A person with a high EQ can command respect of that calibre.

Spiritual Quotient (SQ)

SQ can be described as a trait that influences a person's moral compass. Others can use spirituality to achieve self-confidence, ethics, and inner wellbeing, while some channel it through religion.

The Spirituality Quotient, a 2001 book by Danah Zohar and Ian Marshall, was the first to raise awareness of the issue and to talk about laying a foundation of confidence and joy.

Organizations have come to view this as being crucial to an individual's performance over time. People with high SQ are better team players because they can put the needs of the community above their own desire.

Additionally, it is a leadership trait that influences the course and future of businesses all over the world. Three essential components of lifehappiness, responsibility, and humility can be attained by those who have a high spiritual quotient. Spirituality is becoming a third prime characteristic in the debate between IQ, EQ, and SQ. People that have higher EQ and SQ tend to go further in life than those with a high IQ but low EQ and SQ. Most schools capitalize on improving IQ levels while EQ and SQ are played down. A man of high IQ can end up being employed by a man of high EQ and SQ even though he has an average IQ.Your EQ represents your

Character, while your SQ represents your Charisma. Give in to ha bits that will improve these three Qs, especially your EQ and SQ.

Now there is a 4th one, a new paradigm:

The Adversity Quotient (AQ)

The measure of your ability to go through a rough patch in life, and come out of it without losing your mind.

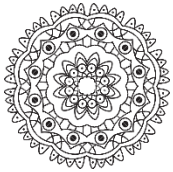
When faced with troubles, AQ determines who will give up, who will abandon their family, and who will consider suicide.

Parents, please expose your children to other areas of life than just Academics. They should adore manual labour (never use work as a form of punishment), Sports and Arts.

Develop their IQ, as well as their EQ, SQ and AQ. They should become multifaceted human beings able to do things independently of their parents.

Finally, do not prepare the road for your children. Prepare your children for the road."

The Nature-Nurture Debate.



Much of the early work on the link between IQ and crime has been dismissed as overly simplistic and as unsubstantiated owing to poor research designs. However, the issue of a possible association between intelligence and violence has persisted into this century. Much of the contemporary debate centres on whether intelligence is biologically based or the product of environmental conditions. Nature theory holds that intelligence is genetically determined and that low IQ directly causes violent and criminal behavior. Nurture theorists, on the other hand, argue that intelligence is determined by the quality of the social environment particularly during childhood – and is not a product of genetic inheritance. Intelligence, they maintain, is largely determined by the quality of the parental bond, the level of intellectual stimulation received during early childhood, the nature of local peer-group relations, and the quality of neighborhood schools. Therefore, nature theorists argue that, if IQ scores are indeed lower among violent criminals, this likely reflects differences in environmental or cultural background, not differences in biological makeup[35].

[35] Rogers, L., H. Cleveland, E. van den Oorg and D. Rowe. (2000). Resolving the debate over birth order, family size and intelligence. American Psychologist, 55, 599–612.

Nature theory also came under attack in the late 1920s and early 1930s when new studies determined that the IQ-crime relationship was not as strong as initially expected. For example, Slawson in (1926)[36] found that although adolescent offenders tended to score lower on verbal intelligence tests, they had normal scores on measures of nonverbal intelligence. These results highlighted the possibility that IQ tests may be culturally biased. Similarly, Edwin Sutherland, one of the founding fathers of modern criminology, provided evidence that observed differences in IQ scores often stemmed from problems with testing methods rather than actual differences in intelligence. After being condemned by Sutherland as an unproductive line of inquiry, research on the IQ-crime relationship disappeared from the criminological literature for several decades.

The Re-emergence of the IQ-Violence Debate

An **intelligence quotient** (**IQ**) is a total score derived from a set of standardized tests or subtests designed to assess human intelligence.[37] The abbreviation "IQ" was coined by the psychologist William Stern for the German term *Intelligence*

[36] Slawson, John. (1926). Delinquent Boys. Boston: Budget Press

[37]Braaten, Ellen B.; Norman, Dennis (1 November 2006). "Intelligence (IQ) Testing". Pediatrics in Review. **27** (11):403–408. doi:10.1542/pir.27-11-403. ISSN 0191-9601. PMID 17079505. Retrieved 2020-01-22.

quotient, his term for a scoring method for intelligence tests at University of Breslau he advocated in a 1912 book.[38]

Historically, IQ was a score obtained by dividing a person's mental age score, obtained by administering an intelligence test, by the person's chronological age, both expressed in terms of years and months. The resulting fraction (quotient) was multiplied by 100 to obtain the IQ score. For modern IQ tests, the raw score is transformed to a normal distribution with mean 100 and standard deviation 15.[39] This results in approximately two-thirds of the population scoring between IQ 85 and IQ 115 and about 2.5 percent each above 130 and below 70

Scores from intelligence tests are estimates of intelligence. Unlike, for example, distance and mass, a concrete measure of intelligence cannot be achieved given the abstract nature of the concept of "intelligence". IQ scores have been shown to be associated with such factors as nutrition, parental socioeconomic status, morbidity and mortality, parental social status, and perinatal environment. While the heritability of IQ has been investigated for nearly a century, there is still debate about the significance of heritability estimates and the mechanisms of inheritance. IQ scores are used for educational placement, assessment of intellectual disability, and evaluating job applicants. In research contexts, they

[38]Stern 1914, pp. 70–84 (1914 English translation), pp. 48–58 (1912 original German edition).

[39] Gottfredson 2009, pp. 31–32

have been studied as predictors of job performance and income. They are also used to study distributions of psychometric intelligence in populations and the correlations between it and other variables. Raw scores on IQ tests for many populations have been rising at an average rate that scales to three IQ points per decade since the early 20th century, a phenomenon called the Flynn effect. Investigation of different patterns of increases in subtest scores can also inform current research on human intelligence.

Precursors to IQ testing

Historically, even before IQ tests were devised, there were attempts to classify people into intelligence categories by observing their behavior in daily life. Those other forms of behavioral observation are still important for validating classifications based primarily on IQ test scores. Both intelligence classification by observation of behavior outside the testing room and classification by IQ testing depend on the definition of "intelligence" used in a particular case and on the reliability and error of estimation in the classification procedure.[40]

The English statistician Francis Galton (1822–1911) made the first attempt at creating a standardized test for rating a person's intelligence. A pioneer of psychometrics and the application of statistical methods to the study of human diversity and the study of

[40]Psychological Profiling and Criminal Investigations, Laurence Alison

inheritance of human traits, he believed that intelligence was largely a product of heredity (by which he did not mean genes, although he did develop several pre-Mendelian theories of particulate inheritance). He hypothesized that there should exist a correlation between intelligence and other observable traits such as reflexes, muscle grip, and head size. He set up the first mental testing center in the world in 1882 and he published "Inquiries into Human Faculty and Its Development" in 1883, in which he set out his theories. After gathering data on a variety of physical variables, he was unable to show any such correlation, and he eventually abandoned this research.[41]

French psychologist Alfred Binet, together with Victor Henri and Théodore Simon had more success in 1905, when they published the Binet-Simon test, which focused on verbal abilities. It was intended to identify "mental retardation" in school children, but in specific contradistinction to claims made by psychiatrists that these children were "sick" (not "slow") and should therefore be removed from school and cared for in asylums.[31] The score on the Binet-Simon scale would reveal the child's mental age. For example, a six-year-old child who passed all the tasks usually passed by six-year-olds—but nothing beyond—would have a mental age that matched his chronological age, 6.0. (Fancher, 1985). Binet thought that intelligence was multifaceted, but came under the control of practical judgment.

[41]Psychologist Alfred Binet, Co-Developer Of The Stanford–Binet Test

The many different kinds of IQ tests include a wide variety of item content. Some test items are visual, while many are verbal. Test items vary from being based on abstract-reasoning problems to concentrating on arithmetic, vocabulary, or general knowledge.

The British psychologist Charles Spearman in 1904 made the first formal factor analysis of correlations between the tests. He observed that children's school grades across seemingly unrelated school subjects were positively correlated, and reasoned that these correlations reflected the influence of an underlying general mental ability that entered into performance on all kinds of mental tests. He suggested that all mental performance could be conceptualized in terms of a single general ability factor and a large number of narrow task-specific ability factors. Spearman named it *g* for "general factor" and labeled the specific factors or abilities for specific tasks *s*.] In any collection of test items that make up an IQ test, the score that best measures *g* is the composite score that has the highest correlations with all the item scores. Typically, the "*g*-loaded" composite score of an IQ test battery appears to involve a common strength in abstract reasoning across the test's item content.

In a controversial article that appeared in the late 1970s, Travis Hirschi and Michael Hindelang reviewed existing data on the intelligence-crime relationship and concluded that IQ is a stronger predictor of crime and violence than many other demographic characteristics are – including social class ([42]). Since the appearance of this article, a large number of other international studies have

[42] Hirschi, Travis and Michael Hinde Lang. (1977). Intelligence and delinquency: A revisionist review. American Sociological Review, 42, 471–586

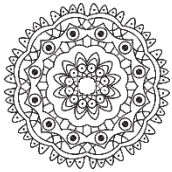
emerged that the support the existence of the IQ-violence relationship. Many of these studies, however, suggest that the IQ-crime relationship is quite weak. For example, an extensive review by the American Psychological Association found only a small relationship between intelligence and criminal behavior. By contrast, in The Bell Curve, James Q. Wilson and Charles Murray in (1994) concluded, after an extensive review of the research evidence, that there is a very strong correlation between IQ and crime and that people with low IQs are more likely to commit crimes, get caught, and be sent to prison. Similarly, a study by Piquero (2000) found that low scores on intelligence tests were among the strongest predictors of violent behavior and could be used to distinguish between violent and non-violent offenders.

While some scholars maintain that there is a direct link between intelligence and criminality, others believe that there is only an indirect association. Some argue, for example, that low intelligence leads to poor school performance. Poor school performance, in turn, directly contributes to criminal behavior. Wilson and Hernstein summarize this argument when they state that "[a] child who chronically loses standing in the competition of the classroom may feel justified in settling the score outside, by violence, theft and other forms of defiant illegality". Critics have responded to this position by maintaining that there are many other factors, besides intelligence, that contribute to success in school. These factors include family support for academic achievement, the quality of teachers and the school environment, the nature of the curriculum, and the degree of student engagement.

The debate over the exact nature of the intelligence-crime relationship is nowhere near to being solved. Most experts agree, for example, that the measurement of IQ is extremely problematic. Furthermore, the distinct possibility that IQ tests are both culturally biased and class-biased greatly undermines the validity of previous research. Finally, even if we accept previous research results at face value, intelligence-based explanations cannot begin to explain major patterns of criminal behavior. IQ scores, for example, do not come close to explaining why men are much more violent than women. Similarly, people do not become more intelligent as they age. Thus, IQ-based theories cannot account for the fact that most offenders age out of crime and violence.[43]

[43]See Seigel and McCormick, 2006.

Mental Illness/Psychriatic Disorder and Violence



Mental disorder, also called a **mental illness**[or **psychiatric disorder**, is a behavioral or mental pattern that causes significant distress or impairment of personal functioning.[4] Such features may be persistent, relapsing and remitting, or occur as single episodes. Many disorders have been described, with signs and symptoms that vary widely between specific disorders. Such disorders may be diagnosed by a mental health professional, usually a clinical psychologist or psychiatrist.

A recent survey of more than 6,000 respondents from 14 countries found that approximately ten per cent of the adult population suffers from some form of mental illness ranging from depression to schizophrenia. Rates of mental illness may be even higher among youth. For example, one study found that one in five children and adolescents residing in Ontario suffer from a significant mental health disorder. Leschied Alan in his writing "The Roots of Violence: Evidence from the Literature with Emphasis on Child and Youth Mental Disorder. Ottawa: The Centre of Excellence in Children's Mental Health." notes that cross-national research has also documented a twenty percent mental illness rate among children between zero and 16 years of age. The most common

disorders among youth include depression, substance abuse and conduct disorder. Research also suggests that mental health issues may put young people at risk of engaging in violent behavior. For example, after an extensive review of the literature, Monahan John in Major mental disorders and violence to others. In D. Stoff, J.Breiling and J.Maser (Eds.), Handbook of Antisocial Behavior (pp. 92–100). Chichester, England: John Wiley and Sons. Noted that "No matter how many social and demographic factors are statistically taken into account, there appears to be a greater than chance relationship between mental disorder and violent behavior. Mental disorder is a statistically significant risk factor for the occurrence of violence."[44]

The causes of mental disorders are often unclear. Theories may incorporate findings from a range of fields. Mental disorders are usually defined by a combination of how a person behaves, feels, perceives, or thinks.[5] This may be associated with particular regions or functions of the brain, often in a social context. A mental disorder is one aspect of mental health. Cultural and religious beliefs, as well as social norms, should be taken into account when making a diagnosis.[45] Services are based in psychiatric hospitals or in the community, and assessments are carried out by mental health professionals such as psychiatrists, psychologists, psychiatric nurses and clinical social workers, using various methods such as psychometric tests but often relying on observation and

[44] Dark psychology, Robert Dale amazon kindle(2020)

[45] Diagnostic and statistical manual of mental disorders (5th ed.). Arlington, VA: American Psychiatric Association. 2013.

questioning. Treatments are provided by various mental health professionals. Psychotherapy and psychiatric medication are two major treatment options. Other treatments include lifestyle changes, social interventions, peer support, and self-help. In a minority of cases, there might be involuntary detention or treatment. Prevention programs have been shown to reduce depression

Research suggests that depression, a relatively common disorder among youth, may be related to aggression. For example, one recent study documented those affective disorders are related to aggression at both home and school. This study is important because other studies have found a link between depression and both property crime and substance use, but not violence. However, the authors of this study do note that they only focused on minor forms of aggression, not serious violence, interestingly a number of studies have found that while minor depression is related to an increased probability of minor criminality, major bipolar depression is not at all related to serious violent behavior. Indeed, major depression may be too crippling a disorder to permit someone to form intent and act out in a violent. Similarly, some experts have suggested that youth suffering from affective disorders are actually more likely to withdraw and harm themselves than to act violently towards others.

Additional research suggests that particular types of mental illness – including schizophreniaare more associated with violent behavior than others are. In circumstances of people who suffer from paranoid delusions that others are trying to harm them, or feel that their minds are being controlled by outside forces, are more vulnerable to periodic episodes of rage and violence than are those

who do not have these symptoms. Research has it that up to 75 of juvenile murderers suffer from some form of mental illness – including psychopathy and schizophrenia. Another study followed 1,000 English children from birth to their 21st birthday and found that only two per cent of the sample met the DSM-III diagnostic criteria for mental illness. However, this two per cent was responsible for 50 per cent of the violent incidents that were documented during the study period.

In sum, research gives tentative support for the idea that mental disturbance or illness may be a root or underlying cause of violent behavior. It is extremely important to note, however, that some scholars suggest that this relationship may be spurious. In other words, the same social conditions that produce violent behavior, including parental neglect, child abuse, violent victimization, racism, peer pressure and poverty may also cause mental illness[46] with severe mental illnesses do not engage in serious violence or criminality It is also interesting to observe that, at the societal level, rates of violent crime have actually decreased at the same time that mentally ill populations have been de-institutionalized.

In 2013, the American Psychiatric Association (APA) redefined mental disorders in the DSM-5 as "a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the

[46]Durant, R., S. Barkin, S. Kreiter and D. Krowchuc. (1999). Exposure to violence and victimization, depression, substance abuse and the committal of violence in young adolescents. Adolescent Medicine, 45, 4–13.

psychological, biological, or developmental processes underlying mental functioning. “The final draft of ICD-11 contains a very similar definition.

The terms "mental breakdown" or "nervous breakdown" may be used by the general population to mean a mental disorder. The terms "nervous breakdown" and "mental breakdown" have not been formally defined through a medical diagnostic system such as the DSM-5 or ICD-10, and are nearly absent from scientific literature regarding mental illness. Although "nervous breakdown" is not rigorously defined, surveys of laypersons suggest that the term refers to a specific acute time-limited reactive disorder, involving symptoms such as anxiety or depression, usually precipitated by external stressors. Many health experts today refer to a nervous breakdown as a *mental health crisis*.

Nervous Illness

Additionally, to the concept of mental disorder, some people have argued for a return to the old-fashioned concept of nervous illness. In *How Everyone Became Depressed: The Rise and Fall of the Nervous Breakdown* (2013), Edward Shorter, a professor of psychiatry and the history of medicine, says:

About half of them are depressed. Or at least that is the diagnosis that they got when they were put on antidepressants. ... They go to work but they are unhappy and uncomfortable; they are somewhat anxious; they are tired; they have various physical pains and they tend to obsess about the whole business. There is a term for what

they have, and it is a good old-fashioned term that has gone out of use. They have nerves or a nervous illness. It is an illness not just of mind or brain, but a disorder of the entire body. ... We have a package here of five symptoms—mild depression, some anxiety, fatigue, somatic pains, and obsessive thinking. ... We have had nervous illness for centuries. When you are too nervous to function ... it is a nervous breakdown. But that term has vanished from medicine, although not from the way we speak.... The nervous patients of yesteryear are the depressives of today. That is the bad news.... There is a deeper illness that drives depression and the symptoms of mood. We can call this deeper illness something else, or invent a neologism, but we need to get the discussion off depression and onto this deeper disorder in the brain and body.

Mental Disorder Can Divided Into Numerous Segments

Anxiety disorder

An anxiety disorder is anxiety or fear that interferes with normal functioning may be classified as an anxiety disorder. Commonly recognized categories include specific phobias, generalized anxiety disorder, social anxiety disorder, panic disorder, agoraphobia, obsessive-compulsive disorder and post-traumatic stress disorder.

Mood disorder

Other affective (emotion/mood) processes can also become disordered. Mood disorder involving unusually intense and sustained sadness, melancholia, or despair is known as major

depression (also known as unipolar or clinical depression). Milder, but still prolonged depression, can be diagnosed as dysthymia. Bipolar disorder (also known as manic depression) involves abnormally "high" or pressured mood states, known as mania or hypomania, alternating with normal or depressed moods. The extent to which unipolar and bipolar mood phenomena represent distinct categories of disorder, or mix and merge along a dimension or spectrum of mood, is subject to some scientific debate.[47]

Psychotic disorder

Patterns of belief, language use and perception of reality can become dysregulated (e.g., delusions, thought disorder, hallucinations). Psychotic disorders in this domain include schizophrenia, and delusional disorder. Schizoaffective disorder is a category used for individuals showing aspects of both schizophrenia and affective disorders. Schizotypy is a category used for individuals showing some of the characteristics associated with schizophrenia, but without meeting cutoff criteria.

Personality disorder

Personality the fundamental characteristics of a person that influence thoughts and behaviors across situations and time—may be considered disordered if judged to be abnormally rigid and maladaptive. Although treated separately by some, the

[47]"Mental Disorders as Brain Disorders: Thomas Insel at TEDx Caltech". National Institute of Mental Health. U.S. Department of Health and Human Services. 23 April 2013. Archived from the original on 7 May 2013

commonly used categorical schemes include them as mental disorders, albeit on a separate axis II in the case of the DSM-IV. A number of different personality disorders are listed, including those sometimes classed as *eccentric*, such as paranoid, schizoid and schizotypal personality disorders; types that have described as dramatic or emotional, such as antisocial, borderline, histrionic or narcissistic personality disorders; and those sometimes classed as fear-related, such as anxious-avoidant, dependent, or obsessive-compulsive personality disorders. Personality disorders, in general, are defined as emerging in childhood, or at least by adolescence or early adulthood. The ICD also has a category for enduring personality change after a catastrophic experience or psychiatric illness. If an inability to sufficiently adjust to life circumstances begins within three months of a particular event or situation, and ends within six months after the stressor stops or is eliminated, it may instead be classed as an adjustment disorder. There is an emerging consensus that personality disorders, similar to personality traits in general, incorporate a mixture of acute dysfunctional behaviors that may resolve in short periods, and maladaptive temperamental traits that are more enduring.[48] Furthermore, there are also non-categorical schemes that rate all individuals via a profile of different dimensions of personality without a symptom-based cutoff from

[48]Clark LA (2007). "Assessment and diagnosis of personality disorder: perennial issues and an emerging reconceptualization". Annual Review of Psychology. **58** (1): 227–57. doi:10.1146/annurev.psych.57.102904.190200. PMID 16903806. S2CID 27 28977

normal personality variation, for example through schemes based on dimensional models.[49]

Eating disorder

Eating disorders involve disproportionate concern in matters of food and weight. Categories of disorder in this area include anorexia nervosa, bulimia nervosa, exercise bulimia or binge eating disorder.[50]

Sleep disorder

Sleep disorders are associated with disruption to normal sleep patterns. A common sleep disorder is insomnia, which is described as difficulty falling and/or staying asleep. Other sleep disorders include narcolepsy, sleep apnea, REM sleep behavior disorder, chronic sleep deprivation, and restless leg syndrome. Narcolepsy is a condition of extreme tendencies to fall asleep whenever and wherever.

People with narcolepsy feel refreshed after their random sleep, but eventually get sleepy again. Narcolepsy diagnosis requires an overnight stay at a sleep center for analysis, during which doctors ask for a detailed sleep history and sleep records. Doctors also use actigraphy and polysomnography.

[49]Essential Lawyering skills, Stefan H. Krieger

[50]"Eating Disorders". National Institutes of Health. National Institute of Mental Health. U.S. Department of Health and Human Services. December 2021. Archived from the original on 7 June 2022. Retrieved 6 May 2019.

Doctors will do a multiple sleep latency test, which measures how long it takes a person to fall asleep.

Sleep apnea, when breathing repeatedly stops and starts during sleep, can be a serious sleep disorder. Three types of sleep apnea include obstructive sleep apnea, central sleep apnea, and complex sleep apnea.[51]Sleep apnea can be diagnosed at home or with polysomnography at a sleep center. An ear, nose, and throat doctor may further help with the sleeping habits.

Sexuality related Disorders

Sexual disorders include dyspareunia and various kinds of paraphilia (sexual arousal to objects, situations, or individuals that are considered abnormal or harmful to the person or others).

Impulse control disorder: People who are abnormally unable to resist certain urges or impulses that could be harmful to themselves or others, may be classified as having an impulse control disorder, and disorders such as kleptomania (stealing) or pyromania (fire-setting). Various behavioral addictions, such as gambling addiction, may be classed as a disorder. Obsessive-compulsive disorder can sometimes involve an inability to resist certain acts but is classed separately as being primarily an anxiety disorder.

Substance use disorder: This disorder refers to the use of drugs (legal or illegal, including alcohol) that persists despite significant problems or harm related to its use. Substance

[51] "Sleep apnea - Symptoms and causes". Mayo Clinic. 20 July 2020. Archived from the original on 29 December 2020. Retrieved 31 March 2022

dependence and substance abuse fall under this umbrella category in the DSM. Substance use disorder may be due to a pattern of compulsive and repetitive use of a drug that results in tolerance to its effects and withdrawal symptoms when use is reduced or stopped.

Dissociative disorder: People with severe disturbances of their self-identity, memory, and general awareness of themselves and their surroundings may be classified as having these types of disorders, including depersonalization disorder or dissociative identity disorder (which was previously referred to as multiple personality disorder or "split personality").

Cognitive disorder: These affect cognitive abilities, including learning and memory. This category includes delirium and mild and major neurocognitive disorder (previously termed dementia).

Developmental disorder: These disorders initially occur in childhood. Some examples include autism spectrum disorder, oppositional defiant disorder and conduct disorder, and attention deficit hyperactivity disorder (ADHD), which may continue into adulthood. Conduct disorder, if continuing into adulthood, may be diagnosed as antisocial personality disorder (dissocial personality disorder in the ICD). Popular labels such as psychopath (or sociopath) do not appear in the DSM or ICD but are linked by some to these diagnoses.

Somatoform disorders may be diagnosed when there are problems that appear to originate in the body that are thought to be manifestations of a mental disorder. This includes somatization disorder and conversion disorder. There are also disorders of how a

person perceives their body, such as body dysmorphic disorder. Neurasthenia is an old diagnosis involving somatic complaints as well as fatigue and low spirits/depression, which is officially recognized by the ICD-10 but no longer by the DSM-IV.[52]

Factitious disorders are diagnosed where symptoms are thought to be reported for personal gain. Symptoms are often deliberately produced or feigned, and may relate to either symptoms in the individual or in someone close to them, particularly people they care for.

In conclusion therefore, The recognition and understanding of mental health conditions have changed over time and across cultures and there are still variations in definition, assessment, and classification, although standard guideline criteria are widely used. In many cases, there appears to be a continuum between mental health and mental illness, making diagnosis complex. According to the World Health Organization, over a third of people in most countries report problems at some time in their life which meet the criteria for diagnosis of one or more of the common types of mental disorder.[53] Corey M Keyes has created a *two continua model* of mental illness and health which holds that both are related, but distinct dimensions: one continuum indicates the presence or absence of mental health, the other the presence or absence of mental

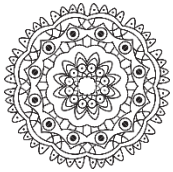
[52]Dark psychology, Robert Dale amazon kindle(2020)

[53]"Cross-national comparisons of the prevalence's and correlates of mental disorders. WHO International Consortium in Psychiatric Epidemiology".

illness. For example, people with optimal mental health can also have a mental illness, and people who have no mental illness can also have poor mental health.[54]

[54] "What is Mental Health and Mental Illness? | Workplace Mental Health Promotion". Health Communication Unit. Workplace Mental Health Promotion. University of Toronto: Dalla Lana School of Public Health. 12 April 2010. Archived from the original on 1 August 2010

Substance Abuse and Violence



Substance abuse including alcoholism has now been formally recognized as a mental illness. Research has also established that there is a strong positive correlation between levels of substance abuse and violence. For example, a Corrections Canada survey of over 6,000 inmates, many of them violent offenders, found that 48 per cent admitted to using illegal drugs at the time of their offence. Furthermore, numerous cross-national surveys of prison inmates reveal that the vast majority were under the influence of drugs and/or alcohol at the time of their offence. [55]

It is hypothesized that alcohol and drugs can impact violence in three ways. First of all, alcohol and drugs may have psychopharmacological effects that impair cognition and subsequently increase the likelihood of aggressive behavior.

Many have argued, for example, that the physiological impact of substance use serves to reduce social inhibitions and thus frees or enables people to act on their violent impulses. Others, however, have argued that this "disinhibition effect" is culturally specific. Anthropologists have shown, for example, that the social effects of

[55]Psychological Profiling and Criminal Investigations, Laurence Alison

alcohol vary dramatically from country to country. In some nations, alcohol intoxication is related to violence, in others it is not. Is it possible that the effect of alcohol and drugs are socially defined? In some societies, people may come to believe that there is a strong relationship between intoxication and violence. If so, some people may come to use alcohol and drugs as an excuse or justification for their violent behavior. Studies do suggest that people are more forgiving of people who engage in violent acts while intoxicated and are less forgiving of people who engage in violence while sober.

A second way that substance abuse may increase violence is by increasing economic need. Many drug addicts, for example, engage in violent crimes (including robbery) in order to gain enough money to support their habits. Violence is also related to competition between drug traffickers. Indeed, any lucrative drug trade may attract ruthless individuals and gangs who are willing to resort to violence in order to control markets (territories) or ensure the repayment of drug debts. Drug traffickers may also draw the attention of other predatory criminals who specifically target them for robbery because they carry large volumes of cash (and drugs) and cannot report their victimization to the police.

Over the past 100 years, psychological perspectives on violence have had a major impact on crime control and crime prevention policy. Primary prevention programs that employ psychological principles include strategies that seek to identify and treat personal problems and disorders before they translate into criminal behavior. Organizations involved in such primary prevention efforts include family therapy centers, mental health associations, school

counselling programs and substance abuse clinics. School administrators, teachers, social workers, youth courts and employers frequently make referrals to these programs. Many argue that the expansion of such psychological services will ultimately reduce the level of violent crime in society.

Secondary prevention efforts, on the other hand, provide psychological treatment after a crime has been committed and the offender has become involved in the criminal justice system. Many of these programs are based on social learning principles. Judges often recommend them at the sentencing stage. Furthermore, in other jurisdictions once inmates enter a correctional facility, they are likely to be subjected to intense psychological assessment to determine their treatment needs. Attendance at such programs may also be a mandatory requirement of probation or parole and examples of popular psychologically based rehabilitation strategies include treatment programs for substance abuse, sex offender treatment, anger management training and programs designed to improve cognitive skills. Over the past few decades, considerable debates have emerged with respect to the relative effectiveness of rehabilitative efforts within corrections. In fact, some critics maintain that "nothing works" with respect to the rehabilitation of chronic offenders, thus this issue is subject to a detailed discussion itself.

In sum, as with biosocial theories of crime causation, psychological theories focus on the identification and treatment of individual traits that may predispose people to violent behavior. As such, psychological theorists have been charged with ignoring larger social

forces including poverty, social inequality, neighborhood disorganization and racism, these as well may have a strong impact on violent behavior. Such factors, however, have been considered by a wide variety of sociological and criminological perspectives on crime. [56] All three of these criminology theories undergo constant scrutiny and revision, but they provide the foundations upon which current ideas are based. These theories are one of the most interesting aspects of psychology.

How psychological disorders affect judicial decisions.

Judges play a central decision-making role in the justice system. Here we discuss judges' decision making about forensic phycological evidence introduced in these cases, judicial receptivity to various kinds of mental health evidence and experts, and judges' understanding of clinical and scientific evidence and the ways they make evidentiary rulings about such evidence. The authors focus on judicial decision making at the trial court level, in those arenas that are most relevant to the phycological health practitioner who is called on to provide testimony for the courts. And finally, how psychological disorders affect judicial decisions. In this chapter we shall begin with a brief description of the successes and failures of psychologists' attempts to influence the courts.[57] The proper exercise of the sentencing discretion frequently calls for a consideration of the offender's mental state at the time of the offending or at the time

[56]The Mind of the Criminal, Reid Griffith Fountain

[57]Psychological Profiling and Criminal Investigations, Laurence Alison

of sentence or both and the presumption of sanity is encoded under the section 11 of the penal code act which is to the effect that a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he or she is through any disease affecting his or her mind incapable of understanding what he or she is doing or of knowing that he or she ought not to do the act or make the omission.[58]

But a person may be criminally responsible for an act or omission, although his or her mind is affected by disease, if that disease does not in fact produce upon his or her mind one or other of the effects mentioned in this section in reference to that act or omission.

The decision of the Victorian court of appeal were it significantly reduced a sentence given to Akon Guode, in this case it was a mother who was formerly of South Sudan origin, who deliberately killed her three children by plugging her car into lake. On passing of the ruling, she was supposed to spend 20 years behind bars after about a year later she appealed and was sentenced to 18 years in prison with a non-pay role period of 14 years. The above judgement majority of the high court judges found that the Victorian judges "erred" by taking into account an irrelevant factor, quashing the sentence and sending the case back to court of appeal and be reheard, at conclusion of the rehearing. Court found that the original 26-year sentence on her murder case was "manifestly excessive" to quote the learned judge "sentences of this order are generally reserved for cases un attended to by powerful mitigating factors of which existed in this case further

[58]Dark psychology, Robert Dale amazon kindle(2020)

more in our opinion giving weight to the applicant's mental condition required significantly more lenite sentences to have been imposed'. The main reason for the 8½ year sentence reduction was that the trial judge had not sufficiently taken Guode's major depression into account. These being her having previously led a difficult life which was "extraordinarily difficult" and was exposed to profound trauma during the Sudan civil war. Where she witnessed her husband being murdered and was raped till, she was unconscious. Her having fell into deep depression after birth of one of her children Bol, her having heard a record of being assaulted in prison. While the circumstances of this offence were unusual, it is common for offenders to have mental health problems. With that in mind, how are mental health issues taken into account during the criminal justice process?[59]

In rare cases, people with mental health problems may be found unfit to stand for trial or not guilty as result of their impairment However, in most cases, people with mental health problems will stand trial (or plead guilty) in the ordinary way and if convicted, they will face the normal sentencing process. Where this happens, the sentencing judge must decide whether to take the offender's mental health problems into account. There will be a sentencing hearing, in which evidence of the offender's mental health condition will be presented. The judge must consider this evidence, as well as the relevant sentencing principles, in reaching a verdict.

[59]Dark psychology, Robert Dale amazon kindle(2020)

Thus, laying down the sentencing principles in this area are known as the verdims principle. These principles state that a mental impairment may affect a sentence in six ways:

It may reduce an offender's "moral culpability" or blameworthiness for the offence. This will only be the case where there was a link between the mental health condition and the offence. For example, the condition may have impaired the offender's ability to think clearly about the offending behavior. In such circumstances, there is less need to denounce the relevant conduct or to punish the perpetrator as harshly.

A mental impairment may affect the kind of sentence that is imposed or its conditions. For example, it may provide a reason for suspending an offender's sentence, or for requiring an offender to get treatment.

The offender's mental health condition may make him or her an unsuitable vehicle for sending a deterrent message to the community. One circumstance in which this may be the case is where the offender's condition is likely to attract community sympathy.

The offender's mental impairment may make it inappropriate to send him or her a deterrent message. One example of this is where the offender has an impaired capacity to learn from the court's statements. An offender's mental health condition may result in punishment weighing more heavily on him or her than it would on a person in normal health. This provides a reason for reducing the level of punishment.

There may be a serious risk that imprisonment would cause a deterioration in the offender's mental health. This also provides a basis for imposing a more lenient sanction. While not included in the Verdins principles, mental health problems may also affect an offender's perceived prospects for rehabilitation. This will often depend on whether the relevant condition is considered treatable.

Each of these principles is mitigating they point towards a more lenient sentence being given. However, it is also possible for a mental health condition to point towards the need for a more severe sentence. This will be the case where the community is seen to require protection from the offender due to that condition. For example, the offender's condition may be considered untreatable, and his or her criminal behavior unlikely to change as a result.

It will sometimes be the case that an offender's mental health condition will provide reasons for both reducing and increasing an offender's sentence. In such cases, the judge will need to balance all of the conflicting considerations and determine the most appropriate sentence.

The Verdins principles applies to any kind of mental disorder or abnormality, and have been used for offenders suffering from many different conditions including schizophrenia, depression and bipolar disorder. In some cases, there does not even need to be a diagnosed mental illness. What matters is how the condition affected the offender at the time of the offending, or is likely to affect him or her in the future. However, it is important to note that the principles do not apply to pedophilia or personality disorders.

Some concern has been expressed about how frequently the Verdins principles are raised in sentencing hearings. However, the courts have been careful to ensure the principles are only applied after careful scrutiny of the evidence.

Courts have noted that sentencing offenders with mental health problems is inevitably difficult. Many different sentencing considerations must be taken into account, some of which pull in different directions. While perhaps not perfect, the Verdins principles currently provide the most nuanced approach to this complex issue that needs to be tackled fairly and with sensitivity.

The proper exercise of the sentencing discretion frequently calls for a consideration of the offender's mental state at the time of the offending or at the time of sentence or both. In R v Tsiaras, one of the earliest decisions of the Court of Appeal, the Court (Charles, Callaway and Vincent JJA) identified five ways in which serious psychiatric illness not amounting to insanity was relevant to sentence:

"First, it may reduce the moral culpability of the offence, as distinct from the prisoner's legal responsibility. Where that is so, it affects the punishment that is just in all the circumstances and denunciation of the type of conduct in which the offender engaged is less likely to be a relevant sentencing objective. Second, the prisoner's illness may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served. Third, a prisoner suffering from serious psychiatric illness is not an appropriate vehicle for general deterrence, whether or not the illness played a part in the commission of the offence. The illness may have supervened since

that time. Fourth, specific deterrence may be more difficult to achieve and is often not worth pursuing as such. [Fifthly], psychiatric illness may mean that a given sentence will weigh more heavily on the prisoner than it would on a person in normal health."[60]

This statement of principle has since been applied many times, by courts in Victoria and in other States. In the process, there has been both elaboration and refinement of the propositions enunciated in **R v Tsiaras.** The three appeals before the Court involve various aspects of the **R v Tsiaras**[61] principles and, for this reason, were heard together. They provide the occasion for a review of the case law since **R v Tsiaras** and for a restatement, in somewhat revised form, of the guiding principles which **R v Tsiaras** laid down.

The **R v Tsiaras** principles were enunciated by reference to "serious psychiatric illness not amounting to insanity". This was entirely understandable, since **R v Tsiaras** itself concerned schizophrenia, a serious psychiatric illness. But the quite erroneous view developed that what was said in **R v Tsiaras** was intended to, and did, "cover the field" in relation to mental illness and sentencing. As a result, sentencing judges have often been faced with the argument that the sentencing considerations identified in **R v Tsiaras** have no application unless the offender's condition constitutes a "serious psychiatric illness" in the **R v Tsiaras** sense.

Indeed, that very issue has been raised on these appeals. In **R v verdims** for example, the Crown submitted that it was "a moot

[60]The tools of Argument, Joel P. Trachtman
[61] [1996] 1 VR 398

point whether depression in any given case amounts to a serious psychiatric illness".

In **R v Buckley**[62] , the Crown argued that it was "questionable whether the appellant's mental state amounts to a 'serious psychiatric illnesses for the purposes of applying the principles in Tsiaras "

The sentencing considerations identified in **R v Tsiaras** are not and were not intended to be applicable only to cases of "serious psychiatric illness." One or more of those considerations may be applicable in any case where the offender is shown to have been suffering at the time of the offence (and/or to be suffering at the time of sentencing) from a mental disorder or abnormality or an impairment of mental function, whether or not the condition in question would properly be described as a (serious) mental illness.

The Court in **R v Tsiaras referred to R v Anderson**[63] where Young CJ and Jenkinson J adopted the following statement of Young CJ in R v Mooney: "In sentencing generally it is necessary to balance personal and general deterrence on the one hand with rehabilitation on the other. But in the case of an offender suffering from a mental disorder or abnormality general deterrence is a factor which should often be given very little weight. General deterrence should often be given very little weight in the case of an offender suffering from a mental disorder or abnormality because such an

[62] [1873] 13 Cox CC 293
[63] [1990] 1 SCR 265

offender is not an appropriate medium for making an example to others."[4]

To emphasize more on this point clearly, the phrase "mental disorder or abnormality" is apt to cover a wide variety of conditions. In Engert the New South Wales Court of Criminal Appeal spoke of "mental disorder". In Channon v R[64],Brennan J spoke of "an offender's psychiatric abnormality". InLauritsenthe Western Australian Court of Criminal Appeal adopted the statement by Malcolm CJ in Watson v R,[9] that "The presence of psychiatric or psychological factors can be an important sentencing factor." To add more emphasis; The sentencing court should not have to concern itself with how a particular condition is to be classified. Difficulties of definition and classification in this field are notorious.[10] There may be differences of expert opinion and diagnosis in relation to the offender. It may be that no specific condition can be identified. What matters is what the evidence shows about the nature, extent and effect of the mental impairment experienced by the offender at the relevant time.

In **R v Yaldiz, Winneke** ACJ (with whom Hampel AJA agreed) said: Whether in the particular case a psychiatric condition should reduce or eliminate general deterrence as an appropriate purpose of punishment will depend upon the nature and severity of its symptoms and its effect upon the mental capacity of the accused."[11]

In Wright, the New South Wales Court of Criminal Appeal said that the applicability of these sentencing considerations did not depend

[64] [1978] FCA 16; 20 ALR 1

on the presence of a "significant mental illness". Rather "The significance of the offender's mental incapacity is to be weighed and evaluated in the light of the particular facts and circumstances of the individual case.Likewise, in **R v Kasulaitis**, the Court (per Batt JA) accepted that considerations of general and specific deterrence should be moderated "in view of the [offender's] psychological state at the time albeit that his state did not amount to psychosis or mental illness." [13]

In **R v Skura, this Court (per Eames JA)** said: "A disorder falling short of serious psychiatric illness might well be capable of moderating the need for general or specific deterrence but the onus was on the applicant to demonstrate that it did so in this case, by establishing that its effect reduced the seriousness of the offences and the moral culpability of the applicant."[14]

In **R v Sebal[65]j, Maxwell P** said that it would " detract from the utility and flexibility of the propositions set out in Tsiaras if there were to be undue focus on the classification of the particular condition, that is, on whether or not it was a recognized psychiatric illness of one kind or another. ... What matters in any given case is not the label to be applied to the psychiatric condition but whether and to what extent the condition can be shown to have affected the offender's mental capacity at the time of the offence and/or at the time of sentence.

Where a diagnostic label is applied to an offender, as usually occurs in reports from psychiatrists and psychologists, this should be

[65] [2006] VSCA 106

treated as the beginning, not the end, of the enquiry. As we have sought to emphasize, the sentencing court needs to direct its attention to how the particular condition (is likely to have) affected the mental functioning of the particular offender in the particular circumstances – that is, at the time of the offending or in the lead-up to it or is likely to affect him/her. As noted earlier, proposition three in R v Tsiaras was in these terms: "A prisoner suffering from serious psychiatric illness is not an appropriate vehicle for general deterrence, whether or not the illness played a part in the commission of the offence. The illness may have supervened since that time." This proposition, too, was initially misunderstood. It was thought to exclude general deterrence altogether as a sentencing consideration. No such absolute rule was intended, as Winneke ACJ explained in R v Yaldiz: "It is not appropriate to simply fasten on to the words 'recognized psychiatric disorder' and then, without reference to the symptoms and consequences of that disorder, to contend that purposes of general deterrence have no part to play in the sentencing process. Whether in the particular case a psychiatric condition should reduce or eliminate general deterrence as an appropriate purpose of punishment will depend upon the nature and severity of its symptoms and its effect upon the mental capacity of the accused."[16]Thus, a person suffering from schizophrenia may not be an appropriate vehicle for general deterrence if the illness "obscured the mental intent to commit the crime."[17]

The correct approach as explained by Batt JA in R v Yaldiz[66] and as subsequently followed in this Court[19] is as follows: "General

[66] [1998] 2 VR 376

deterrence is not eliminated but still operates, sensibly moderated, in the case of an offender suffering from a mental disorder or severe intellectual handicap."

The need for "sensible moderation" of general deterrence has been explained in a number of different ways. In R v Mooney, as we have seen, Young CJ said that in the case of an offender suffering from a mental disorder or abnormality, general deterrence should often be given very little weight because "such an offender is not an appropriate medium for making an example to others.In Wright, the New South Wales Court of Criminal Appeal described this as "an accepted principle of sentencing law".

In R v Mooney, Lush J said: "The concept of the deterrence of others by the punishment of an offender is that an understanding that an offence is followed by substantial adverse consequences will prevent others from committing the offence. Regard to this consideration must, I think, be relevant to the use of the law as an instrument of social administration. Its significance in a particular case will, however, at least usually be related to the kindred concept of retribution or punishment in which is involved an element of instinctive appreciation of the appropriateness of the sentence to the case. A sentence imposed with deterrence in view will not be acceptable if its retributive effect on the offender is felt to be inappropriate to his situation and to the needs of the community.

In Wright, Hunt CJ at CL said that " the interests of society do not require such persons to be punished as severely as persons without

that disability because such severity is inappropriate to their circumstances. The full understanding of the authority and requirements of the law which is attributed to the ordinary individual of adult intellectual capacities cannot be expected of a person whose intellectual function is insufficient to have that understanding. The means by which the courts give effect to that principle (as an instrument of social administration) is to moderate the consideration of general deterrence to the circumstances of the particular case. But, if the offender acts with knowledge of what he is doing and with knowledge of the gravity of his actions, the moderation need not be great."

The last proposition was recently applied in Benitez v The Queen. Similar views have been expressed by the South Australian Court of Criminal Appeal. In Engert, Allen J (with whom Sully J agreed) said: "General deterrence is simply the deterrence of others and characteristics personal to an offender might make him an unpersuasive vehicle for the deterrence of others in the sight of those others. It must be emphasised that general deterrence is directed to deterring others. So, one must look to the impact upon others. Even in a case where an offender has a mental disability which is unrelated to the commission of the crime the sympathy which his condition must attract in the eyes of others in the community generally may be such that to sentence him with full weight given to general deterrence might have no impact at all upon others. Human sympathy would say: 'Well, you would not expect him to get the same sentence as someone else'."

In R v Matthews, the New South Wales Court of Criminal Appeal (Wood CJ at CL, Sperling and Hislop JJ) said that the reason for giving less weight to general deterrence in the case of an offender suffering from a mental disorder or abnormality lay in the circumstance that "the community will readily understand that the offender who suffers from a mental disorder or abnormality is less in control of his or her cognitive facilities or emotional restraints, and in some instances lacks the ability to make reasoned or ordered judgments. Almost invariably there is a limited appreciation of the wrongfulness of the act, or of its moral culpability, which although falling short of avoiding criminal responsibility does justify special consideration upon sentencing. Moreover, such a condition is inherent and its presence does not depend upon any element of choice."

Proposition one from R v Tsiaras was that serious psychiatric illness might reduce the moral culpability of the offence, as distinct from the offender's legal responsibility for it. As the New South Wales Court of Criminal Appeal (Spigelman CJ) said in R v Israil "To the extent that mental illness explains the offence then an offender's inability to understand the wrongfulness of his actions, or to make reasonable judgments, or to control his or her faculties and emotions, will impact on the level of culpability of the offender, even where the illness does not amount to an excuse at law."

Unsurprisingly, the case law reveals a variety of judicial approaches to this issue. On the one hand, it has been held to be sufficient to reduce moral culpability that the mental disorder affected the offender's ability to exercise appropriate judgment.[29]

On the other hand, it has been said that "... moral culpability would only be lessened where there is a causal connection between the psychiatric illness and the commission of the offence ..., in the sense that the psychiatric condition must have contributed to the commission of the offence.

It is of the nature of the sentencing discretion that views will differ as to how, and to what extent, impaired mental functioning may reduce the blameworthiness of the offender's conduct. The effect on the Court's assessment of culpability will, of course, vary with the nature and severity of the condition, and with the nature and seriousness of the offence. It is not appropriate for an appellate court to be prescriptive in this regard, nor is it possible to be exhaustive. It may assist sentencing judges, nevertheless, if we list the various ways in which impaired mental functioning has been held correctly, in our view to be capable of reducing moral culpability.[67]

Impaired mental functioning at the time of the offending may reduce the offender's moral culpability if it had the effect of;

(a) impairing the offender's ability to exercise appropriate judgment;

(b) impairing the offender's ability to make calm and rational choices, or to think clearly

(c) making the offender disinhibited

[67] Dark psychology, Robert Dale amazon kindle(2020)

(d) impairing the offender's ability to appreciate the wrongfulness of the conduct;

(e) obscuring the intent to commit the offence

(f) contributing (causally) to the commission of the offence.

As we have said, this is not to be taken as an exhaustive list.

In R v Smith, King CJ identified two different ways in which ill-health might be a factor mitigating punishment: "Generally speaking ill-health will be a factor tending to mitigate punishment only when it appears that imprisonment will be a greater burden on the offender by reason of his state of health or when there is a serious risk of imprisonment having a gravely adverse effect on the offender's health." Proposition 5 from R v Tsiaras[68] captured the first of these, as follows: "Psychiatric illness may mean that a given sentence will weigh more heavily on the prisoner than it would on a person in normal health."This proposition requires neither explanation nor qualification. Self-evidently, a prisoner suffering from (for example) severe depression will find each day in prison more of a burden than would a person in normal health.

In our view, the second possibility identified in R v Smith also has potential relevance to the mentally ill offender. Imprisonment might well cause an existing mental condition to deteriorate. In the recent case of R v Vardouniotis for example, there was evidence that a previous period of imprisonment had aggravated the offender's

[68] [1996] 1 VR 398

depression and precipitated psychosis. This further consideration should be expressed as a new proposition 6, as follows:

"Where there is a serious risk of imprisonment having a significant adverse effect on the offender's mental health, this will be a factor tending to mitigate punishment."

In the light of the preceding discussion, the R v Tsiaras principles can now be reformulated, as follows. Impaired mental functioning, whether temporary or permanent ("the condition"), is relevant to sentencing in at least the following six ways:

a) The condition may reduce the moral culpability of the offending conduct, as distinct from the offender's legal responsibility. Where that is so, the condition affects the punishment that is just in all the circumstances; and denunciation is less likely to be a relevant sentencing objective.

b) The condition may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served.

c) Whether general deterrence should be moderated or eliminated as a sentencing consideration depends upon the nature and severity of the symptoms exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of sentence or both.

d) Whether specific deterrence should be moderated or eliminated as a sentencing consideration likewise depends upon the nature and severity of the symptoms of the condition as exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of the sentence or both.[41]

e) The existence of the condition at the date of sentencing (or its foreseeable recurrence) may mean that a given sentence will weigh more heavily on the offender than it would on a person in normal health.

f) Where there is a serious risk of imprisonment having a significant adverse effect on the offender's mental health, this will be a factor tending to mitigate punishment.

R V Verdins [69]

The appellant pleaded guilty to one count of murder and one count of manslaughter by unlawful and dangerous act. He was sentenced to 18 years' imprisonment for the murder and nine years' imprisonment for the manslaughter. The learned sentencing Judge ordered those five years of the sentence for manslaughter be served cumulatively on the sentence for murder, making a total effective sentence of 23 years. The sentencing Judge fixed a non-parole period of 18 years. The murder victim was the appellant's former partner (L). They had met in 1997 when she was 17 and he was 18. In 2000,

[69] **[2007] VSCA 62 - 16 VR 269; 171 A CRIM R 227**

they began living together in the appellant's family home. In 2001, L had a romantic encounter with another man, which provoked intense jealousy on the part of the appellant. He became increasingly suspicious of her and began following her home from work. When she subsequently confirmed that she was seeing somebody else, his behavior became increasingly obsessive. He made numerous telephone calls to her and sent her numerous messages, professing his love for her and expressing his desire to re-establish their relationship.[70] On 17 September 2003, the appellant sent L an email saying that he wished to see her one last time. They met up and – in circumstances which remained unclear – the appellant subsequently murdered L, by shooting her twice in the chest using a homemade pen pistol. The appellant drove his car along a freeway at speeds of between 180 and 200 kilometers per hour. He drove his car into the rear of the vehicle driven by the second victim, which burst into flames after the collision and rolled before stopping upside down on the median strip. The second victim died by incineration inside the burning vehicle. L's body was found in the appellant's car.

The learned sentencing Judge noted the submission, made on the plea, that the Court should take into account that the appellant was depressed at the time of his offending. Her Honour said: "Senior counsel making the plea on your behalf submitted that the court should take it into account that you were depressed at the time of your crimes. I accept the medical evidence confirming your depressed state from Dr Jenkins, a psychiatrist at the Alfred

[70] Psychology and Law, Amina Memon

Hospital, who diagnosed you to be suffering from major depression some two days after the incident, and Dr Lester Walton, a psychiatrist who agreed with Dr Jenkins. Dr Walton agreed that you were properly described as having suffered from a major mental disorder.

Mr. Watson-Munro examined you on 25 August and 9 September 2005. It was his opinion that you were suffering from a major psychological decompensation as a result of your inability to come to terms with the end of your relationship with [L]. He said that your downward spiraling mood had been exacerbated by substance abuse involving ecstasy, amphetamines and alcohol. Your anxiety in his view would have impacted on your ability to function in the community and to solve problems. Mr. Watson-Munro told the court that you were perhaps more vulnerable than most people to the effects of a breakdown of a relationship.

I have taken your depression into account in sentencing you. The authorities make it clear that your depressed condition moderates the requirement for general deterrence in this case, even though no psychiatric condition has been identified."

Counsel for the appellant accepted that this was a convenient summary of the expert evidence. He contended that, in these circumstances, it was only appropriate that the weight given to general deterrence as a sentencing consideration be moderated or reduced. He relied **on R v Tsiaras, R v Yaldiz[71], R v**

[71] [1998] 2 VR 376

Sebalj and Thompson v The Queen. He further contended that the appellant's mental disorder greatly reduced his moral culpability, but that the sentencing Judge had not dealt at all with that issue.

Counsel for the appellant pointed out that, having expressed an intention to moderate the weight to be given to general deterrence, her Honor then went on to say the following:

"Others in the community must nevertheless be deterred from responding to the breakdown of a relationship in the way you reacted. Behavior such as yours is totally unacceptable. Whilst you're driving may have been compromised, as senior counsel for the prosecution pointed out, you chose to shoot yourself in the mouth and to drive dangerously on the freeway. You did not choose to kill yourself in a way that would not endanger others. As a result of your choice, an innocent man driving home that night was killed. Once again, it is important that other members of the community must be deterred from using their vehicles on a public highway in such a way." Counsel for the appellant's complaint is that in neither of these passages did the learned Judge state that the weight being given by her to general deterrence was being moderated or reduced at all. This, it is contended, was sentencing error.

In our view, this submission is without substance. There was no inconsistency between, on the one hand, saying that the appellant's depression moderated the requirement for general deterrence and, on the other, emphasizing the need for others to be deterred from reacting violently to the breakdown of a relationship and, in particular, from using their vehicles on a public highway in such fashion. To moderate the significance of general deterrence did not

mean to eliminate it altogether. The learned sentencing Judge declared that she had treated the appellant's condition as moderating the requirement of general deterrence and, in our view, the sentence imposed does not suggest otherwise. As to moral culpability, her Honor did say that she had taken the appellant's depressed state into account as a "mitigating factor". This is to be taken as meaning that she regarded the seriousness of his conduct, or his culpability for it, as being reduced because of his depression. Again, there is nothing in the sentences imposed to suggest otherwise. There would be a range of views reasonably open as to the extent to which the appellant's mental condition did reduce his moral culpability. For example, it was not suggested that the appellant was unaware of exactly what he was doing or that what he was doing was wrong.[41] On the other hand, it may be assumed that his judgment was significantly affected. As the sentencing Judge noted, the attack on L was premeditated. The appellant brought with him a pistol and ammunition to a pre-arranged meeting. He then shot her not once but twice and there was an interval between the shots, during which he got rid of a fired cartridge and reloaded the weapon.

The final ground of appeal was that the sentence was manifestly excessive. In essence, this submission relied on the matters which we have already considered, concerning general deterrence and moral culpability. Counsel for the appellant also relied on the other mitigating factors referred to by the sentencing Judge, namely, his youth; his early pleas of guilty; his remorse; and his good prospects of rehabilitation. All of those matters were taken into account and, as we have already indicated, we think that the sentences imposed were well within the range open to her Honor, giving full weight to

the significance of the mental impairment. It was for these reasons that we announced at the conclusion of argument that the appeal would be dismissed.

R.V Buckley[72]

The appellant pleaded guilty in the County Court to one count of aggravated burglary, 21 counts of burglary, one count of handling stolen goods, one count of obtaining property by deception and 78 counts of theft. On the count of aggravated burglary, he was sentenced to two years and six months' imprisonment; on the counts of burglary, to sentences ranging from three months to two years; and on the counts of theft, to sentences ranging from seven days to 18 months. The total effective sentence was five years, and the non-parole period three years.

There were two reports before the Court concerning the appellant's mental state. The first was a Forensic are report dated 12 January 2004, obtained by the Magistrates' Court with respect to proceedings in early 2004 concerning a breach by the appellant of an intensive correction order. The report was written after he had commenced committing the offences with which we are concerned. The breach of that order had taken place in mid-2003, but only four of the 102 counts currently under consideration occurred in 2003, and three of those four were in November,2003.

[72] [1824]

According to the report, the appellant had had significant substance abuse problems in the period 2000-2002. He had become a daily user of amphetamines. He reported feeling depressed as he was decreasing his use of amphetamines. He also reported a psychotic episode induced by amphetamines, with paranoid symptoms. His daily use of amphetamines had caused "significant impairment in his occupational, financial and relationship functioning." The conclusion of the report was that the breach of the ICO had occurred while the appellant was experiencing a depressive episode which resulted in him "not prioritizing (compliance with) his ICO over his employment." By early 2004, however, his mood was reported to be improving.

The other report was from Mr Ian Joblin, a forensic psychologist, who assessed the appellant in October 2005, before his plea hearing took place in the County Court. Mr Jobling noted that there appeared to be a significant connection between the appellant's "virtually uncontrolled use of amphetamine(s)" and the dishonesty offences. Mr. Jobling's assessment was in these terms.

"At the time of my interview with [the appellant] he presented reasonably well. As indicated above, there was no evidence of psychological dysfunction with him. He is certainly not psychotic. He is a man of reasonable intellect. I did not consider that he would fulfil the diagnostic criteria for a personality disorder.

Against that, one notes the offending. Basically, it is my strong opinion that the offences occurred in a context and it was that context that was responsible for the psychological state related to the

offending. Outside that context in my opinion there would be a question as to whether the offending would have occurred.

That context began when he found his best friend, a man he had trusted for many years, with his wife. This was totally unconscionable for him. He reported that he simply could not accept that his best friend would do that to him, nor that his wife would. He reported that at that time because the business had lost the insurance company contract, he had been working extremely long hours and he acknowledged that she probably became lonely. In his mind that does not excuse her behavior.

From that point there were a host of difficulties. He could not return to work at his business and that was sold at a large loss. He remained in the house for some time but then moved to live with his parents and the house was sold. He had to pay his wife in settlement. He sold his assets. Importantly in trying to deal with all of this he developed what became a serious amphetamine addiction from what had previously been a use of amphetamine to assist him in working long hours. He then simply deteriorated in his psychological state. Any money he had he spent on amphetamine or gambling. His resources were quickly depleted. Under these conditions the offences occurred.

These offences, therefore, were based on a need to support an amphetamine and gambling habit. The appellant] reported that all the items taken were either sold prior to being taken or taken on order. The appellant] reported considerable regret about any persons present in the addresses when he was there." Counsel for the appellant argued that these reports showed that" a significant

motivating factor lying behind the offending was the appellant's depression, something that the appellant self-medicated by means of amphetamine."

The evidence established, so it was submitted, that the appellant " suffered a disorder which was likely to cause him to react maladaptively to the stressful situation in which he found himself, and that he was, accordingly, likely to behave quite irrationally as a consequence. In this situation the evidence did establish that the appellant was a person unlikely to be able to make calm and rational choices, and, therefore, his disability contributed to some extent to his offending. It follows ... that the appellant's moral culpability was reduced. 'Counsel for the appellant argues that none of these matters appears to have been taken into account by the sentencing Judge.

Counsel for the Crown submitted that neither of the reports clarified the severity of any depression suffered by the appellant or whether it was of clinical dimension. He argued that an assessment of the nature and severity of the symptoms, and the effect of the condition on the appellant's mental capacity, disclosed no basis for treating his moral culpability as reduced or for reducing the weight to be accorded to general deterrence. He argued that the following matters were significant: the appellant's thought processes were not disordered or affected by his condition and he must have been aware of what he was doing;

a) the offences were premeditated, and involved substantial planning for their commission and for the sale of the stolen goods;

b) the offending continued over a significant period of time and was the antithesis of "spur of the moment" offending;

c) the appellant's feelings of depression were caused, or at least exacerbated, by his voluntary abuse of amphetamines; and

d) the appellant had had an opportunity to receive appropriate medical treatment for his condition and did not avail himself of it.

In our opinion, the Crown's submission must be upheld. It was the appellant's drug addiction, not his psychological condition, which was productive of the offending, as the learned trial Judge fully appreciated. There was nothing in either psychologist's report to suggest that there was any relevant nexus between the state of depression and the offending in question.

Counsel for the appellant next submitted that the sentences imposed on the appellant were manifestly excessive, having regard to his psychological condition, his early plea of guilty, his remorse, his good prospects of rehabilitation and the absence of violence. Counsel for the Crown submitted that the numerous offences committed by the appellant " were audacious and showed a complete disregard for the property rights of innocent members of the community."

In short, it was argued, the appellant was a professional burglar and thief. On occasions, he stole to order, having already arranged buyers for the goods he was planning to steal.[42]Counsel for the Crown submitted that the appellant's offending merited a significant term of imprisonment, notwithstanding the mitigating factors.

In our view, the contention of manifest excess must fail. As noted by the learned sentencing Judge, many of the offences were aggravated by the fact that they were committed while the appellant was either undergoing some other sentence or was already on bail or on a recognizance to be of good behavior. Furthermore, the appellant was prepared to enlist the services of a 14-year-old boy for two of the offences and his 19-year-old girlfriend for other offences. Given his significant criminal history, which the Judge rightly regarded as being "highly relevant", the individual sentences and the orders for cumulation made by her Honor were well within range.

Lastly, counsel for the appellant argued that the sentences imposed on the appellant offended against the principle of parity, given that his co-offender had been released on a 12-month community-based order, and ordered to perform 250 hours of unpaid community work over a 12-month period. While acknowledging that there were differences between the offenders. Counsel for the appellant argued that the disparity between the sentences was too great.

The Crown submission was that the circumstances relating to the appellant on the one hand and the co-offender on the other could not have been more different. The co-offender was only 19 and had only one prior conviction, for shoplifting. She had been entitled to a significant discount in sentence, her very early plea of guilty having been accompanied by co-operation of the authorities, including an undertaking to give evidence against the appellant. In our view, the Crown's submission was clearly correct. It was for these reasons that we announced at the conclusion of the argument that the appeal would be dismissed.

R v V.O[73]

The appellant pleaded guilty to one count of murder. He was sentenced to 18 years' imprisonment, with a non-parole period of 14 years. (At the date of the offence, the appellant was aged 23). The circumstances of the offence were as follows. In mid-2002, the appellant became friendly with a 14-year-old ("AW"). In early 2003, they began going out together. They saw each other three or four times a week and spoke by telephone every day. They went out for meals together and to the movies.

In mid-2003, AW tried to end the relationship, having decided that the appellant was not the right person for her. She told him that she did not want to see him anymore. Subsequently, the appellant went to AW's house late at night, after she had gone to bed, and knocked on her window. AW did not respond but went into her mother's bedroom and lay down in her mother's bed. The appellant entered the house and went into the mother's bedroom. AW had fallen asleep and was woken by her mother shouting at the appellant and telling him to leave. AW's mother telephoned the police, who arrived a few minutes later and directed the appellant to leave.

After that incident it appeared that the appellant had accepted that the relationship was over. AW and the appellant had contact only occasionally and he appeared to be willing to be just a friend of AW's. A month or two later, however, their contact again became more frequent, with the appellant insisting that they see each other

[73] Psychology and Law, Amina Memon

much more often. The appellant made another nocturnal visit to AW's house, and knocked on her window. AW went out and spoke to the appellant, from then on, she began ignoring his telephone calls.

In September 2003, AW was walking home from school when the appellant approached her. Once again, she told him that she did not want to see him anymore. He demanded otherwise and became very emotional. In order to break free of him, AW told him that she would keep seeing him, whereupon he let her walk away. Similar behavior was repeated over the following month.

On one occasion, the appellant came to AW's house and demanded that she come with him to his house. He grabbed her by the arms and dragged her into the back yard. He then pulled her into his car and drove down the road. He sat and talked at AW for a couple of hours, repeatedly telling her how hurt he was. The following day AW told her mother what had happened and her mother said that the next time the appellant came over she would call the police.

A few days later the appellant returned to the house after midnight. He knocked on AW's window and woke her up, saying that he wanted to talk to her. She went to her mother's room. The mother went to the back door and told the appellant to leave. Once again, the mother telephoned the police who attended a few minutes later and found the appellant in the front yard. Police advised AW that if she did not want to see the appellant again, she would need to obtain a court order.

Between 3 December 2003 and 26 January 2004, AW was overseas on holidays. Her mother joined her for the latter part of the holiday. On 27 January 2004, the day after their return from overseas, the appellant arrived at the house at about 11:00 am. AW was at home alone. At first, she ignored the appellant when he knocked on the front door. He then went into the back yard and knocked on the back windows. Eventually AW answered the door. He told her that he had entered the house and taken the key. He said that he had done this in order to see whether she was lying to him or not (about not having another relationship). He handed back the key and said that he knew the relationship was over and that he would not be coming back again.

On 5 February 2004, AW received a telephone call from a mutual friend of hers and the appellants. The friend told AW that the appellant had said that, if AW were to end their relationship, he would do something to her parents. AW then telephoned the appellant who, she later said, sounded normal. Another mutual friend recounted a similar communication from the appellant.

On the night of 8 February 2004, AW went to bed at about 11:00 pm. Her mother was in the living-room watching television. About 20 minutes later, AW heard knocking on her bedroom window. She opened the curtains and saw the appellant standing outside, gesturing to her to come out of the house. AW went to her mother, who walked to the back door and out into the back yard. The appellant was no longer there. Five minutes later, the appellant telephoned AW on her mobile telephone, demanding that she come and talk to him. AW said that she would speak to him the following

day, to which he replied, "No. I want to talk to you now". He went on, "I was good, but I have chosen to be bad now". AW said "Do whatever you want" and hung up.[74]

AW went back to bed. About five minutes later she heard knocking on her window. She left her bedroom and told her mother that the appellant was still outside. Her mother said that she would hell him to get out. AW followed her mother to the back door. Her mother walked out to the back yard and shouted at the appellant, "Get out of my house". Through the glass panel in the door, AW saw her mother walk towards the appellant, to the point where she was just visible. AW then heard her mother screaming and calling out for AW.

AW ran outside and saw her mother on the ground bleeding from the stomach. She saw the appellant holding a knife in his right hand and bending down over AW's mother, who had stopped screaming and was breathing very hard. AW ran straight towards the appellant and tried to take the knife from him but he pushed her away. AW saw her mother raise her left arm. AW shouted at the appellant, "If you want to do something, do it to me". AW then saw the appellant strike her mother twice on the back of the head. She thought she heard her mother scream for help again. Once more AW tried to take the knife from the appellant but was forcefully pushed away and fell to the ground. As she stood up, AW saw the appellant stab her mother once more. The appellant grabbed AW by the arm and said "You can come with me". He was still holding the knife. AW

[74]Psychological Profiling and Criminal Investigations, Laurence Alison

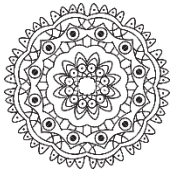
screamed, "No" and called out for help. The shouting and screaming attracted the attention of neighbors, who came out and intervened. The appellant jumped over a side fence and ran down an adjacent driveway into the street. Police and ambulance arrived soon after. AW's mother was already dead. The appellant was apprehended in a laneway nearby. He did not flee and was cooperative as the police effected the arrest. Subsequently, in a tape-recorded interview, the appellant made extensive admissions. He said that he had taken a kitchen knife with him when he went to AW's house. The knife was about 30 centimeters long. He said he had intended to frighten AW with the knife. His account of the subsequent confrontation with AW's mother, and his infliction of multiple stab wounds, was substantially consistent with the account given by AW.

When asked why he had stabbed AW's mother, the appellant said that he thought that, once her mother died, he would be able to have AW. He said he had thought about this a long time before.

"I thought about just wait until [AW] finish school and I just take [her] away. ... And I really don't know what's wrong with me. ... I was thinking of taking her ... somewhere far and quiet, where no-one – no-one could find us."

When asked why he had thought it necessary to stab the mother, he answered, "I just think, you know, it's all because of her." He then added: "I probably want to prove to [AW] that I'm very serious." When asked whether he was intending to kill AW's mother when he stabbed her, the appellant answered, "Probably".

Assessment of Insanity



In regards physiology mental disorder unto judicial decisions.

Insanity, as opposed to competence, refers to an individual's mental state at the time of the crime rather than at the time of the trial. According to legal principles of insanity, it is only acceptable to judge, find someone criminally responsible, and punish a defendant if that individual was sane at the time of the crime. In order to be considered sane, the defendant must have exhibited both *mens rea* and *actus reus*. Mens rea, translated to "guilty mind", indicates that the individual exhibited free will and some intent to do harm at the time of the crime. Actus reus refers to the voluntary committing of an unlawful act. The insanity defense acknowledges that, while an unlawful act did occur, the individual displayed a lack of *mens Rea*. The burden of proof in determining if a defendant is insane lies with the defense team. A notable case relating to this type of assessment is that of Ford v. Wainwright, in which it was decided that forensic psychologists must be appointed to assess the competency of an inmate to be executed in death penalty cases.

There are various definitions of insanity acknowledged within the legal system. The McNaughton rule (1843) defines insanity as the

individual not understanding the nature and quality of his or her acts or that these acts were wrong due to a mental disease or defect. This is also referred to as the cognitive capacity test. Meanwhile, the Durham Test (established in Durham v. United States,(1954) states that one can be declared insane if the actions were caused by a mental disorder. The vague nature of this description causes this definition to only be used in one state (New Hampshire). The final definition acknowledged within the courts is the Brawner Rule (U.S. v. Brawner, 1972), also referred to as the American Law Institute Standard. This definition posits that, due to a mental disease or defect, an individual is considered insane if unable to appreciate the wrongfulness of an act and are unable to conform their behavior to the dictates of the law.[75]

Evaluating insanity involves using crime scene analysis to determine the mental state at the time of the crime, establishing a diagnosis, interviewing the defendant and any other relevant witnesses, and verifying impressions of the defendant. Challenges associated with this type of assessment involve defendant malingering, determining the defendant's past mental state, the chance that different experts may come to different conclusions depending on the assessment method used, and the fact that it is very common for society to label any psychological disorder as insane (though few actually fall into this category; insanity primarily involves psychotic disorders).[76]

[75] Psychology and Law, Amina Memon
[76] Dark psychology, Robert Dale

In most legal systems, a person who commits a crime is held criminally responsible for this act based on the proposition that a person has freedom of action and therefore could have refrained from committing the crime. Criminal responsibility therefore requires the intention to conduct the act (*mens rea*) in addition to this conduct being voluntary and prohibited (intentional bodily movement), or *actus reus*. Both elements of the crime (*mens rea* and *actus reus*) have to be proven beyond a reasonable doubt to result in a guilty verdict. In case a mental disorder was present at the time of the alleged crime and this disorder contributed to the commission of the crime, criminal responsibility can be reduced or even result in an excuse from conviction or punishment. As a result of this doctrine, the mental condition of a suspect is to be taken into consideration by criminal justice decision makers.[77]

A judge or jury is usually not equipped with medical or psychological expertise to determine whether a defendant suffers from a mental disorder and to what extent this contributed to committing the crime by impairing the ability to appreciate the nature of the action or wrongfulness of the act (based on **M'Naghten Rule, see R v. M'Naghten, 1843).** In order to inform the judge or jury on these factors and to assist them in their decision-making process, a forensic mental health expert can be requested to do an evaluation.

When it is suspected that a defendant suffers from mental health problems, it is possible to request a pre-trial mental health

[77]The Mind of the Criminal, Reid Griffith Fontaine

examination. Forensic mental health experts focus on giving evidence in court and advise on treatment for offenders with severe mental illness, thereby preventing recidivism and protecting society . Apart from evaluation of the mental health of a defendant, the expert, usually a psychologist or psychiatrist, also examines other aspects of a defendant's life. These aspects include criminal record, mental health history, substance use, family and peer relationships, employment and education, physical health (including medication) and prior (mental health) care or treatment. Information is collected by examining records of the defendant's history, contact with collateral sources and interviews with the suspect. In addition to clinical assessment, psychological, neurological or biological tests may be used to determine whether a mental disorder is present. Assessment of risk of future dangerousness and recidivism is frequently also a part of the examination. The expert will prepare a report of findings and this will be added to the case file and/or they will have to testify during the actual trial. The contents of the testimony or report can be used by a judge or jury in various legal decisions in the criminal procedure: criminal responsibility, sentencing decisions, and competencies to confess, plead guilty, stand trial, be sentenced or be executed. Since expert information can play a crucial role in judicial decisions, the question therefore arises how decision-makers interpret and use the information provided by forensic mental health experts.[78]

[78]The Mind of the Criminal, Reid Griffith Fontaine

Prior research indicated that legal professionals value the information provided by forensic mental health experts. Therefore, it is important to understand how this information is used in decision-making. Consequences for both defendants and society are significant: mental disorders, especially depression and psychosis, are highly prevalent among prisoners and can result in adverse outcomes such as suicide and aggressive behavior when left untreated Defendants who are not criminally responsible for their actions as a result of mental disorder should be hospitalized in order to protect society by treating their mental health problems. To optimize the use of forensic mental health information in judicial decision-making to benefit both the defendant and society, it is important to determine how this information is used in different judicial decisions. There is no overview of the use of forensic mental health expertise in different judicial decisions, thereby also focusing on possible prejudicial effects of this information in decisions where it is irrelevant (i.e., whether a suspect actually committed the alleged crime). Forensic mental health information can play a crucial role in individual cases whereby the specific effects may differ according to type of decisions and interact with the specific context and circumstances of a particular case (e.g., diagnosis, offense, prior record etc.). However, it is important to explore whether any systematic effects of forensic mental health information can be distinguished in different types of decisions. A systematic review can provide this overview while also identifying areas where no or little research has been done yet . Hence, the aim of the current review is

to provide a synthesis of existing empirical research on forensic mental health expert testimony and judicial decisions.[79]

Legal context in forensic mental health expertise in judicial decisions

Before the relationship between forensic mental health expertise and judicial decision-making is further examined, it is important to outline the legal context and operationalize key concepts used in the current review, since we expected to find studies from multiple different jurisdictions. Comparison between jurisdictions of the use and effects of forensic mental health expert testimony on judicial decisions is difficult because legal standards and operationalization and classification of mental illness differ across jurisdictions. With regard to these differences, we have aimed to focus on the elements which are relevant in most legal systems and when necessary, explicate essential differences.

Guilt: mens rea

First, expert information on the mental health of the defendant is a resource to assess criminal responsibility, thereby focusing on the *mens rea* element of a crime. In many Western jurisdictions, the assessment of criminal responsibility is done in case of an insanity defense. The prevalence of an insanity defense is extremely low. In the United States, in of felony cases a defendant enters an insanity

[79]Reading people, Jo-Ellan Dimitrius

plea. Whether this plea is successful, differs considerably across jurisdictions. The legal criteria to establish insanity vary across jurisdictions. In many US states a person may be considered insane when at the time of committing the act the party accused was laboring under such a defect of reason, from disease of mind, as not to know to the nature and quality of the act he was doing, or as not to know what he was doing was wrong (R v. M'Naghten, 1843). In many European countries, as well as in most US states, a person may be considered not responsible when at the time of the crime as a result of mental illness or defect the defendant lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. These last criteria incorporate elements from multiple other insanity tests used in the US, namely absence of volitional control (Irresistible Impulse Test; R. v. Byrne, 1960) as well as the presence of a mental illness (Durham Rule; Durham v. State, 1954). Most legal insanity standards include the presence of a mental illness that causes significant deficits in the ability to understand the illegal nature of one's act and be aware of the consequences. Depending on the jurisdiction, defendants with a mental illness can be found guilty, not guilty by reason of insanity (NGRI) or guilty but mentally ill. Depending on the jurisdiction, a decision on criminal responsibility may be dichotomous (guilty vs. NGRI) or on a scale (e.g., responsible, diminished responsible, not responsible).

In addition to differences in legal standards, different perspectives exist with regard to what types of mental illness can reduce criminal responsibility. For example, differences exist on whether personality disorders, especially antisocial personality

disorder and psychopathy, can impair criminal responsibility. In many European jurisdictions, a defendant with a personality disorder may be judged sufficiently mentally ill which may result in a NGRI verdict (or other similar decision as a result of diminished responsibility). In contrast, personality disorders are generally not considered to impair criminal responsibility in North American jurisdictions. In certain states, personality disorders are explicitly excluded from insanity defenses. A theoretical argument for diversity in criminal responsibility decisions for different types of disorders can be found in the attribution theory. Attribution theory proposes that people typically attribute more responsibility to individuals whose behaviors appear to be tied to personality traits within their control rather than those that are less controllable Previous research suggests that jurors are generally more receptive to uncontrollable factors than to those that appear to be controllable[80]. This perception results in the idea that mental disorders with delusionary thinking (e.g. psychotic disorders, schizophrenia) may result in less attribution of criminal responsibility than mental disorders with more (supposedly) controllable symptoms (e.g. lying, deception, lack of remorse as symptoms of antisocial personality disorder).

In addition to an insanity defense, mental health information can also be used in a justification of self-defense or reduce the charge in certain crimes (e.g., murder versus manslaughter) by focusing on the extent of the criminal intent.

[80]Barnett, Brodsky, & Price, 2007; Garvey, 1998

GUILT: ACTUS REUS

While information from a forensic mental health expert plays an important part in assessment of the *mens rea* element of a crime, this information should in no case affect the assessment of facts in a case and even less the decision whether a defendant committed the alleged crime. However, research has shown that the boundary between the process of subjective allocation of responsibility based on personality assessment and the process of assessing guilt based on an examination of facts is not very clear. To prevent any prejudicial effects, in some jurisdictions, such as some states in the United States, a (capital) trial is bifurcated in a guilt phase and a sentencing phase. If the defendant is found guilty, the trial moves to a penalty phase in which the same jury receives additional information on mental health, as well as other mitigating and aggravating circumstances, before deciding on the (death) sentence (Fisher, 2011). Similarly, the United States try to prevent any prejudicial effect by regulating the admissibility of evidence. To be admissible, evidence needs to be relevant in a court of law (Federal Rules of Evidence 401). Additionally, evidence that is relevant to the legal question at hand can be ruled inadmissible if its probative value is outweighed by unfair prejudicial bias (Federal Rules of Evidence 403).[81]

In non-bifurcated trials, testimony on mental health problems and other personal circumstances of a defendant are not reserved until the sentencing phase of the trial. Information may even be known to

[81]Psychological Profiling and Criminal Investigations, Laurence Alison

the decision-makers before the trial starts if it is part of the case file (e.g., in the Netherlands). As a result, this information may interfere with the evaluation of the facts of the alleged crime. This could result in interpretation of facts and evaluation of guilt of the defendant unduly guided by knowledge of the personality of the defendant. It is possible that certain mental disorders, such as psychopathy, can lead to these prejudicial effects since symptoms of certain disorder are (stereotypically) associated with criminality. People with a mental illness are often perceived as being more violent and therefore dangerous. This stigma creates a link between mental illness and criminality. Therefore, a defendant with a mental illness may be considered guilty more often than a defendant without mental illness.[82]

Sentencing

A second important function of forensic mental health information is in the sentencing phase of a trial. Information on the mental health of defendant can be submitted to mitigate punishment (e.g., life in prison instead of death penalty) and to advise on rehabilitative efforts. A mental disorder can be accepted as a mitigating factor if this disorder has impaired the rationality of practical reasoning by the defendant or as an indication that he or she is no future danger to society. In other jurisdictions, when a mental disorder leads to diminished responsibility this can also result in mitigated punishment. This function has its foundation in a retributive

[82]The Mind of the Criminal, Reid Griffith Fontaine

perspective on punishment. Punishment is supposed to be the deliberate infliction of suffering proportionate to the culpability of the offender and harm of the crime committed. The presence of a mental disorder can reduce the responsibility for the crime committed and therefore mitigate or exempt the punishment imposed.

On the other hand, the prosecution can use information on the defendant's mental health as an aggravating factor to emphasize risk of future dangerousness. If a defendant is less capable of understanding the nature and wrongfulness of his act, he or she can be perceived as having a higher risk of future criminal behavior. Despite research demonstrating that clinical variables of disorders (with the exception of antisocial personality disorder/psychopathy) are not actually predictive of either general or violent recidivism), people with a mental illness are often perceived as being more violent and therefore dangerous. Containment of this risk may be believed to be achieved through incapacitation by committing a person, either to prison or to a psychiatric hospital. This function has its foundation in a more utilitarian perspective on sanctions. Sanctions are imposed to serve a future purpose (e.g., individual prevention through incapacitation or rehabilitation, or general prevention trough deterrence). Whenever the presence of a mental disorder is used to emphasize dangerousness for future harm to victims and society it can be hypothesized that the presence of a mental disorder increases the length or intensity of a sanction. This increased length of incarceration (or commitment in case of involuntary commitment to a treatment center) can on the one hand have the purpose of incapacitation to protect society. On the other hand, a

longer duration of incarceration in a treatment center may be required to treat a mental illness and other criminogenic risk factors in order to rehabilitate an offender Attribution theory may also provide a further explanation possible for diverse effects for different types of disorders. [83]Mental disorders with delusionary thinking can result in less attribution of criminal responsibility than mental disorders with more controllable symptoms, such as lying and deceiving Less criminal responsibility can subsequently mitigate sentencing and therefore differences in sentencing may occur based on type of disorder present.

Most research is often either doctrinal in nature focusing on case law and legislation or focuses on the quality of forensic mental health evaluation. Empirical research is less prevalent. A literature review on the use of mental disorder in judicial decisions in juvenile cases only identified 8 empirical studies focusing on this relationship: found that the presence of a mental disorder or mental health report increases the probability of a juvenile offender being confined. An overview of studies on adult defendants is, to the best of our knowledge, non-existent. Results from empirical studies have been inconclusive and some research suggests that the actual effects of introducing mental health information may be contrary to intended purposes[84]. A recent review focused on the possible labeling effects of a diagnosis of a mental disorder, specifically psychopathy, in sentencing decisions[85], but an overview for studies specifically focusing on information from a forensic mental health expert

[83] Cappon and Vander Laenen (2013)

[84]Edens et al., 2005; Stites & Dahlsgaard, 2015)

[85]Berryessa & Wohlstetter, 2019

instead of a simple label or diagnosis is, to the best of our knowledge, still absent.

Six out of the 19 included studies researching sentencing decisions focused on the death penalty versus a life sentence in prison. In the United States, criteria for a death penalty recommendation include the defendant being a continued danger to society and absence of any mitigating circumstances. Forensic mental health expertise can provide information for both these criteria. All studies had an experimental design using a case vignette and all made explicit that a sample of death-qualified jurors was used.

Two studies did not report a significant main effect of mental health expertise on the recommendation of the death penalty reported that psychopathy increased ratings of risk of future violence, although this did not affect death penalty recommendations. The majority of studies reported a main effect of forensic mental health expertise on death penalty recommendation. The direction of this effect differed according to diagnosis, type of evidence and timing of expert testimony in a trial:

The death penalty was recommended more often with the diagnosis of psychopathic disorders compared to psychotic disorders or no disorder. Psychopathic offenders were judged as being more dangerous than healthy offenders and were considered less treatable. This finding implies that psychopathy is not considered a mitigating circumstance. Defendants suffering from a psychotic disorder were less likely to receive a death penalty recommendation, even though no differences between psychopathic and psychotic disorders were

found regarding judgment of future dangerousness[86]. This result could imply that a psychotic disorder is considered a mitigating circumstance in itself.

When a diagnosis of psychopathy was supported by neuroimage evidence, the percentage of recommended death penalties marginally decreased (from 62% to 47%, $p = .12$) [87]However, when neuroimage evidence for schizophrenia was presented, differences in death penalty recommendations between psychopathy and schizophrenia disappeared and the defendant with schizophrenia was judged more responsible than without neuroimage evidence .[88]One study focused specifically on the effect of expert testimony about an alcohol use disorder on death penalty recommendations. Presence of such expert testimony resulted in less inclination towards the death penalty during the trial, independent of an alcohol use disorder. This result was only found in the college sample, not in the community sample. However, in the eventual decision of punishment, only gender and punitiveness of the jurors were significant predictors of the death penalty in both samples: males and more punitive oriented jurors voted for the death penalty. Testimony on alcohol use disorder did not have a significant effect on death penalty recommendation. This finding suggests that this diagnosis is neither used as a mitigating or aggravating circumstance in the sentencing phase of a capital trial.

[86]Edens et al., 2004; Edens et al., 2005)

[87]Saks et al., 2014

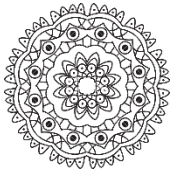
[88]Saks et al., 2014

Further support for different effects during the course of a trial (Boyle, 2016), was found by Reardon et al. (2007). Their study focused on effects of the presence and severity of mental illness or mental retardation on death penalty recommendations in combination with manipulations of the severity of the crime and timing of the hearing (pre-trial or during sentencing). When jurors were presented with severe mental health problems in a pre-trial hearing, the probability of reaching a death verdict was lower than when they learned of the severe mental health problems during the sentencing phase of the trial.

Overall, the results suggest an effect from forensic mental health expertise on death penalty verdicts. However, the direction of the effect varies and differed according to diagnosis, type of evidence and timing of expert testimony in a trial.[89]

[89] APA. (2019). Law & Psychology. Retrieved from https://www.apa.org/topics/law/

The Psychiatric Evidence



The appellant was examined by Dr Lester Walton on 26 July 2005, in the psychiatric unit at Port Phillip Prison. He had been committed for trial on 5 October 2004, following a contested committal hearing, and had reserved his plea. At the commencement of his trial on 4 July 2005, the appellant had pleaded not guilty. Before the commencement of evidence, however, the appellant changed his plea and on 5 July 2005, he pleaded guilty. Dr Walton's examination thus took place between the plea of guilty and the plea hearing itself (18 November 2005). Dr Walton gave evidence at the plea hearing, and was cross-examined. His report made clear that he had not been asked to give "a specific analysis of this man's likely state of mind at the time of the killing". Rather, he had been asked to assess the appellant's current mental state.

The substance of his expert opinion, as set out in his report and elaborated in his evidence, was as follows:

a) Because of the stress surrounding his presentation on the charge of murder in mid-2005, the appellant had decompensated psychiatrically to the point where he had developed an acute psychosis. That condition was "simply reactive to the recent stressful circumstances."

b) As at the date of the plea hearing, the appellant was clearly suffering from a major mental disorder – tentatively diagnosed as schizophrenia – although he was "much weller than he was". The appellant was well and had no symptoms of psychosis. The anti-psychotic medication had been withdrawn, largely at the appellant's own insistence.[45]

c) The major psychotic illness which developed in mid-2005 did not manifest itself until after the offence was committed.[46] The psychosis did not manifest itself until months later.There was no basis for a defence of mental impairment in relation to the killing. Nor did the appellant have a serious mental illness short of metal impairment (ie. he did not fall into the category defined in **R v Tsiaras)** at the time of the killing.

d) The appellant had seemingly had a "very intense sort of passion" for AW but it could not be said that it had reached delusional proportions at the time of the incident.[50]

e) There is a so-called prodrome [precursor or forerunner; premonitory symptom][51] to the onset of a psychotic illness like schizophrenia. The prodrome is usually recognised in retrospect. Subtle changes in personality, different behavior, the expression of somewhat unusual ideas and changes in emotion often precede the emergence of the full-blown illness. The description (by defence counsel) of the appellant as having had a "dramatic change" in personality and having developed a fixation on AW was "entirely consistent" with their having been such a prodrome.[52]

f) No sensible prediction could be made about whether the appellant would have further acute psychotic episodes. The most likely prognosis was that there would be recurring episodes of psychosis over the years.[53] Relapses could occur spontaneously in the absence of stress.[54]

There was also a report from a clinical psychologist who had seen the appellant in December 2004, well before the emergence of the psychotic symptoms. The psychologist reported that the appellant had had "no major health problems". Personality testing indicated mild to moderate anxiety. According to the report, the contributing factors to the anxiety included " variable concentration, indecisiveness, reduced morale, experience of life as a strain most of the time, difficulties piling up so high he believes he will never overcome them, and doubts about the reality of the world around him. He expressed concern about interpersonal relationships, sensitivity to criticism, the view that others look at him critically, ready embarrassment, frequent disappointment in others, inability to tell anyone all about himself, and worrying that things he has said may have hurt people's feelings. He would appear to have negotiated some suicidal ideation with the assistance of psychiatric staff – in the past he said he had thought of shooting himself."

The psychologist concluded, however, that the anxiety was linked to the appellant's "current predicament" (facing a murder charge). He said that the appellant displayed a "hypomanic (sic) trend (in keeping with his immaturity and impulsivity)", and responses associated with social introversion/withdrawal:

"This young man remains deeply troubled, experiencing a high level of guilt and self-reproach - he is yet to come to terms with the fact that he engaged in a series of actions resulting in the death of another person, most likely obliging him to spend many years without his liberty. Since being in prison he has been the conforming person he had always been prior to that outrageous act – working, studying, achieving enhanced prisoner status."

After noting the psychologist's assessment, the learned sentencing Judge turned to consider the evidence of Dr Walton:The psychiatrist, Dr Walton, examined you on 26 July 2005, soon after your trial. He was not asked to attempt an assessment of your state of mind at the time of the killing. At the time of your trial, you were being treated with ante-psychotic (sic) medication and this treatment has continued until recently. The investigations of Dr Walton have disclosed that since May of this year your mental state had deteriorated significantly, particularly as the trial date approached. Then in July when you were admitted to the prison psychiatric unit you were experiencing paranoid delusions, auditory hallucinations and suicidal ideas. This responded to medication, so that there was no question of your being unfit to stand trial. The medication has, in October, ceased and you presently suffer from no psychiatric condition.

Dr Walton expresses the opinion that, at the time of the killing, you might have suffered from a nascent or non-diagnosable form of psychosis which did not manifest itself until mid-2005 when it may have been triggered by the stress caused by the imminent trial. I do not conclude, however, from this speculation that the conduct with

which you have been charged was the result of any psychiatric illness. I do not understand your unreasonable suspicions directed to [AW] as an indication of mental illness; but rather as the fantasies of a disappointed lover. Dr Walton considered it likely that you may suffer from recurrent episodes of the psychotic condition which he identified, you pleaded guilty on the second day of your trial. By so doing you spared the State the cost of the trial and, more importantly, you spared [AW] the ordeal of reliving her memory of that terrible evening. I take this into account in your favor notwithstanding that your plea was very late. This is a case where the sentence must reflect the value which the community places on the life of one of its members. Murder is a serious offence the most serious of all.[90]

The sentence which I impose must serve as a warning to those who may be minded to carry knives. It is not uncommon for young people to experience the disappointment and desolation of rejection by a person whom they love. It is entirely unacceptable that you or anyone else should see the use of a knife as an appropriate means of resolving such a situation. The sentence must serve as a deterrent to such persons. It was put on your behalf that you suffered a serious psychiatric illness which should bear upon the sentencing process. In Tsiaras the Court of Appeal explained how, in the appropriate case this may be so. The fact is that I do not accept that, at the time of the offence or now, you suffered or suffer from such an illness. My task is to weigh up the competing considerations which bear upon the sentence which I impose. I have mentioned already that the

[90] Psychology and Law, Amina Memon

sentence must reflect the community's disapproval of your conduct, the harm you have inflicted on others and the need for general deterrence." In conclusion, his Honor said: "Although I am satisfied that you stabbed [the victim] with intent to kill, I have regard to your confused state of mind at the time of your impulsive conduct. In all the circumstances, I consider that the appropriate sentence is one of imprisonment for 18 years. [91]This is, in your case, much less than the maximum sentence for the crime of murder which is life imprisonment. I fix 14 years as the period within which you are not eligible to be released on parole."

Counsel for the appellant argued that, at the time of sentencing, the undisputed fact was that the appellant did suffer from a serious mental illness, namely, schizophrenia. Objection is taken to his Honor's statement (in paragraph [24]) that he did not accept that the appellant was then (or previously) suffering from such an illness. Counsel for the appellant sought to rely on propositions 3 and 5 from R v TsiarasCounsel for the appellant submitted, further, that the learned sentencing Judge did not properly consider the question whether the so-called "prodrome" of schizophrenia existed at the time of the killing. There was, he argued, a firm basis for the learned sentencing Judge to have been satisfied on the balance of probabilities that it did. He argued, by reference to R v Tsiaras proposition 1, that "the existence of a prodromal state at the time of [the] offence would be relevant to disposition, even if the full schizophrenia was yet to fully manifest itself, so long as it could be

[91] Psychology and Law, Amina Memon

inferred that the appellant's judgment was impaired by the incipient condition: see, generally, R v **Yaldiz; R v Chambers and R v Sebalj**

Counsel for the appellant argued that it was not reasonably open to the learned sentencing Judge to reject the defence submission that the appellant had been suffering the incipient stages of the onset of his mental illness at the time the offence was committed.[92]

Counsel for the Crown argued that there was no evidentiary basis for concluding that the appellant suffered from a serious psychiatric illness at the time of the murder, or that his offending conduct was preferable to any such illness. He pointed out that the appellant had disposed of the murder weapon and had changed his clothes after the killing. There was, he argued, a rational motive for the murder, in that the appellant was angry at what he saw to be the victim's frustration of his attempts to continue his relationship with AW.

At the time of sentencing, counsel for the Crown submitted, the position as to the appellant's condition was "by no means clear". The question of whether his time in custody would be made more difficult because of his illness depended on the likelihood of his suffering a relapse, which Dr Walton could not predict with certainty. Accordingly, so it was submitted, it was open to the learned sentencing Judge not to be satisfied that there was any "serious psychiatric illness" relevant to sentencing. We deal first with the question of the appellant's state of mind at the time of the

[92] APA. (2019). Law & Psychology. Retrieved from https://www.apa.org/topics/law/

offending. As already noted, his Honor did not accept that, at that time, the appellant suffered from a serious psychiatric illness of the **R v Tsiaras** kind. In the light of Dr Walton's evidence, no other conclusion could have been arrived at.

Nor did Dr Walton's reference to the "prodrome" justify a different conclusion. In the first place, Dr Walton had not had the opportunity to observe the appellant until almost 18 months after the murder. The best that he could say, in response to defence counsel's description of the appellant's apparent personality change, was that it was "consistent with" what would be expected to be observed in the prodrome state. But Dr Walton did not express – and could not have expressed – a concluded view that the appellant was, at the time of offending, in the prodrome state. Secondly, and in any event, the prodrome state is not the mental illness. Rather, it is a forewarning of the later onset of the mental illness. Hence the notion of prodrome as a "premonitory symptom"[93]

Having concluded – correctly in our view – that there was no operative mental illness at the time of the killing, his honor nevertheless gave full consideration to the appellant's state of mind at the time. Twice in the course of argument on the plea, his Honour referred to the appellant as having been at the time "a very disturbed young man".Twice in his sentencing reasons he referred to the appellant's "confused state of mind". His Honour considered, as he was obliged to do, whether the effect of the appellant's obsession with AW was such as to reduce his moral culpability or materially

[93] Psychology and Law, Amina Memon

affect the need for specific or general deterrence. His conclusions are apparent from the sentencing reasons set out above. We can discern no error in the analysis.

We turn now to the appellant's state of mind at the time of sentencing. Dr Walton was unequivocal in his diagnosis that the appellant was still suffering from the psychotic illness which had manifested itself floridly for the first time in July 2005. He expressed this opinion having also stated that the appellant was free of symptoms at that time and was not on anti-psychotic medication.

What mattered, in our view, was not whether the appellant still had the illness but what effect it was likely to have on his experience of imprisonment. Given the positive report from Dr Walton of the appellant's symptom-free condition, to the point where anti-psychotic medication had been terminated, his honor was entitled to disregard the diagnosis for the purposes of **R v Tsiaras** proposition 5. That is, on the evidence before him, there was no material which would have enabled his honor to decide that the appellant would find imprisonment more burdensome than a person not suffering from that illness. Dr Walton had candidly acknowledged that he could not predict the likelihood of a recurrence of psychotic symptoms, although he thought it was likely that this would occur. Although this was not stated, his honor was entitled to assume that any such recurrence would, and could, be effectively dealt with by medication and, if necessary, by hospitalization, a course which had proved successful following the psychotic episode in mid-2005.[94] In

[94] APA. (2019). Law & Psychology. Retrieved from https://www.apa.org/topics/law/

his sentencing remarks, the judge said that there was "no evidence of remorse on your part for what you have done. I do not understand the evidence of [the clinical psychologist] of your sense of guilt and self-reproach as extending to any sense of concern for the harm you have done to others. Counsel for the appellant submits that his honor failed to have regard to what was said in Dr.Walton's report, as follows: "what is clear at this stage is that [the appellant] is significantly remorseful and he does wish to express that by proceedings in the form of plea and sentence. However, he does remain somewhat equivocal. That is not on the basis of his misunderstanding what a defence of provocation involves but simply a residuum of reluctance to fully accept that he has actually killed the mother of his former girlfriend, his infatuation for the latter having not resolved as yet."[95] Counsel for the appellant also points to the reference supplied to the sentencing judge by the Chaplain from the Catholic Prison Ministry at Port Phillip Prison. The Chaplain said that he had known the appellant for 18 months while he was on remand, and that they had had many meetings and discussions. He had found the appellant to be "very honest and very frank in all these discussions". In his letter of reference, he said:

"I find [the appellant] to be a quiet, gentle, kind, considerate, straight forward (sic), thoughtful and reflective person indeed a lovely person. He is highly remorseful and regrets his offence. He is ashamed and sorry for the pain he has caused. The offence was completely out of character with the [the appellant] that I know.

[95] Re, Morse

In summary, I find [the appellant] to be a good, gentle, kind and lovely person, who expresses a high level of remorse and regret. His offence is out of character with the man I know."

Counsel for the Crown submitted that it was open to the learned sentencing Judge to find that the appellant was not truly remorseful, in the sense that he understood and accepted the harm that his offending conduct had caused to others. Counsel for the Crown referred to the fact that the appellant had run a contested committal hearing and that his plea of guilty was not entered until the second day of his trial. Moreover, as commented by Dr Walton, the plea was "somewhat equivocal".

With great respect, we do not think it was reasonably open to conclude, in the face of the unchallenged reports from Dr Walton and the Prison Chaplain, that there was no evidence of remorse. His honor did not address these reports, citing only the reference in the psychologist's report to "guilt and self-reproach". Of course, it is one thing for a person to feel sorry for his actions because of the predicament in which they have placed him; it is quite another for the person to feel sorry because of the harm he has caused to others by his conduct. Although the psychologist did not elaborate on his view, his use of the word "guilt" is, we think, suggestive of remorse rather than self-pity. In any case, the reports from Dr Walton and the Chaplain were unequivocal in stating that the appellant was "significantly" or "highly" remorseful. Those reports were later in time than the psychologist's and were therefore likely to be a more reliable guide to the appellant's attitude as at the date of sentencing.

The presence of remorse is a significant mitigating factor. The effect of his Honor's conclusion was that the appellant was not given the benefit of any mitigation in that regard. That constitutes sentencing error and reopens the sentencing discretion.

Re-sentencing psychology

In support of the argument that the sentence imposed was manifestly excessive, counsel for the appellant advanced the following considerations, which now become relevant to re-sentencing:[96]

i) the appellant was 25 at the date of sentence and 23 at the time of the offence. His relevant youth was a mitigating factor;

ii) the appellant had a difficult upbringing. He was a refugee who had arrived in Australia with no English;

iii) his parents had separated and he had received no guidance from his father. On the contrary, his father had been violent to him;

iv) the appellant suffered a high degree of confusion with respect to his academic difficulties. He failed HSC and a TAFE course. The appellant considered himself, to some degree, to be a failure;

[96] APA. (2019). Law & Psychology. Retrieved from https://www.apa.org/topics/law/

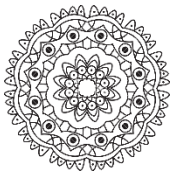
v) it was in this context that the appellant formed a relationship with AW, who was considerably younger than he was but upon whom he became quite emotionally dependent;

vi) the appellant pleaded guilty.

To this list must be added, of course, the fact that the appellant is genuinely remorseful for what he has done.

Giving full weight to these mitigating factors, however, we are of the view that in the exercise of the sentencing discretion we would reach the same conclusion as did the learned sentencing Judge. In our view, having regard to the seriousness of the offence, no lower sentence than that imposed by the sentencing Judge could be justified. As we have already said, we respectfully agree with the learned sentencing Judge that the appellant's obsession with AW did not reduce his moral culpability for this brutal killing, nor did it materially affect the need for specific and general deterrence.

The Relationship Between Psychology and the Law



Law and psychology are two separate disciplines, but they have much in common. While the goal of psychology is to understand the behavior and the purpose of the law to control it, both fields establish norms about people's causes. This means that those interested in the study of human behavior should not limit themselves to considering careers that, at first glance, do not seem to be relevant to psychology.

The field of psychology and law uses resources and research methods and findings of social psychology and cognitive psychology, developmental psychology and clinical psychology to examine legal assumptions to evaluate whether they truly work or not and think in ways to expand them.[97]

Legal psychology involves the practical and psychological investigation of the law, legal institutions and people who come into contact with the law. Legal psychologists usually take basic social and cognitive principles and apply them to problems in the legal

[97]Sales, B. D., & Krauss, D. A. (2015). The psychology of law: Human behavior, legal institutions, and law. doi:10.1037/14593-000

system, such as eyewitness memory, jury decision making, investigations and interviews. The term legal psychology is used lately, mainly as a way to differentiate the experimental approach of legal psychology from clinically focused on forensic psychology. Together, legal psychology and forensic field psychology are more generally known as "psychology and law." After the previous efforts of psychologists to report legal issues, psychology and law became a field of study in the 1960s as part of an effort to improve justice, though that original apprehension has diminished over time.[98]

According to the American Society of Psychology and Law states that "The field of psychology and law suggests the application of scientific and professional aspects of psychology to questions and issues related to law and the legal system" and that the "field covers contributions conducted in a number of different areas (research, clinical practice, public policies and teaching / training among them) of a variety of orientations within the field of psychology, such as development, social, cognitive and clinical"[99]

Various perspectives are encompassed within psychology and law, including most of the main subdivisions in psychology (for example, cognitive, developmental, industrial / organizational and clinical). Then, another illustration, cognitive psychologists can examine the consistency of the eyewitness memory; developmental psychologists

[98]Sales, B. D., & Krauss, D. A. (2015). The psychology of law: Human behavior, legal institutions, and law. doi:10.1037/14593-000

[99]APA. (2019). Law & Psychology. Retrieved from https://www.apa.org/topics/law/

can measure the impact of abuse and abuse on social and cognitive development; Industrial / organizational psychologists can investigate how workplace conditions contribute to the incidence of sexual harassment; and can offer assessment and treatment services to courts and lawyers.

The field of psychology and law values the contributions of professionals in a variety of different settings, including universities and research organizations, clinical practice, law enforcement agencies, correctional institutions, and other government and non-profit agencies. Psychologists have contributed in the decisions of the courts of appeal by appearing at hearings and making available to the judges the outcomes of their investigations and policy analysis over amicus reports acquiesced by Court, and to the lower courts.[100]

Obviously, there is a connection among psychology and law and the study and practice of forensic psychology, whereas forensic psychology is related to the application of clinical specialties to legal institutions and people who come into contact with the law. Legal psychology is mainly related to experimental or research-oriented areas of psychology applied to legal issues. In fact, educational programs are beginning to recognize the important overlap between psychology and law, and this is understood in schools that offer a

[100]Heilbrun, K., & Greene, E. (2013). Psychology and Law. Psychology. doi:10.1093/obo/9780199828340-0100

combined degree in law and psychology in the way they do. Psychologists look to examine how to improve the legal system.[101]

There is a wide-ranging role for psychologists in the legal system and many explicit careers in psychology in law. Psychological researchers can affect the law in several ways. Basic researchers, scientists looking for general or basic information for their own sake, and applied researchers, scientists learning practical problems, can suggestively impact the legal system. Even though these basic and applied methods seem to be different, they be as two excesses of the same continuum. Basic researchers notify the legal system by increasing available data on topics such as memory, human cognition and social influence. Psychologists also estimate the success of various involvements or legal improvements.[102]

Psychologists purpose in the courts system much the same as in the other two areas, with many diverse job roles. One of the many areas they are involved in is an advisory or consultant capacity as an expert witness, which can be for either the defense or prosecution. In an advisory role, the psychologist would counsel a legal client and attorney of the vision that psychology could contribute to the case. In the role of consultant, they might counsel the court on the specifics of psychological research, conclusions of examinations, or even the opinions of other psychological experts.[103]

---

[101]APA. (2019). Law & Psychology. Retrieved from https://www.apa.org/topics/law/

[103]Finkelman. (1999). History of Interactions between Psychology and the Law.

Legal psychology deals with cognitive and social principles and their usage in the legal system. It is based on empirical and psychological research of law along with legal institutions. It is different from forensic psychology which is based on the clinical orientation on experimentation. The relevance of legal psychology can be seen in legal proceedings in different manners:

Academics and research Legal psychologists basically conduct empirical research on new legal topics, which are yet to be popularized. They also work as mentors and guide the upcoming legal representatives.

Advisory role Many a time it is seen that legal psychologists plays an advisory role in court systems. They advise the judges and legal decision makers on some psychological issues pertaining to the concerned case.

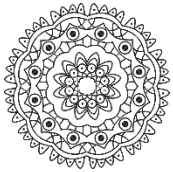
Trial consulting– Sometimes, legal psychologists also work for trial consulting. In some cases, a psychologist who works as an academician is called up as a trial consultant when their expertise is helpful in any particular case. Trial consultants play different roles such as picking up the jurors, performing mock trials, etc.

Policy making and legislative guidance– A legal psychologist's work is based on empirical research and many a time there is a need to establish some policies based on empirical research. Hence, in those times of crises they help the state and national lawmakers.

Amicus briefs– Amicus briefs primarily means to provide opinions with a scientific backup and statistics. But the assistance which a legal professional provides in the form of amicus briefs is questionable.

Expert witnesses– Legal psychologists are well trained to handle legal issues even though they have no formal training. They are helpful in testifying the witnesses. They also test the memory of eye witnesses whereas the forensic psychologist particularly testifies the competency of the defendant.

Relevance of Psychology in Law



Some legal psychologists work with trial consulting. No special training nor certification is needed to be a trial consultant, though an advanced degree is generally welcomed by those who would hire the trial consultant. The American Society of Trial Consultants does have a code of ethics for members, but there are no legally binding ethical rules for consultants[104].

Some psychologists who work in academics are hired as trial consultants when their expertise can be useful to a particular case. Other psychologists/consultants work for or with established trial consultant firms. The practice of law firms hiring "in-house" trial consultants is becoming more popular, but these consultants usually can also be used by the firms as practicing attorneys.

A legal system is necessary for the proper functioning of a society since it tries to solve numerous problems existing in the society in today's times. Though some legal authorities do not consider psychology as a discipline relevant to law, it is relevant as law

[104]An overview of the trial consulting process is provided by the American Society of Trial Consultants, ASTC Website

embodies the theories of behavior. The legal rules, procedures and doctrines reflect the basic assumptions of human nature.

Psychology can help the present decision makers in making decisions by providing more accurate images and pictures of human perceptions and preferences.

It helps to check the veracity of witnesses, as eyewitnesses are often known to be influenced by or afraid of the accused.

It can also help in reducing false confessions by adopting peace models such as those that are highly used by the Ugandan police, psychological studies include the examination of different areas which have legal and social significance.It is based on the empirical and psychological research of legal institutions as well as law and focuses on legal psychology rather than clinically oriented forensic psychology. Pronouncing judgements considering the psychological aspects of the accused's mind ensures justice in its real meaning.

There are two units of psychology which influence law and justice: legal psychology and forensic psychology, which together form psychology and law.

Legal psychology involves the practical and psychological investigation of the law, legal institutions and people who come into contact with the law. Legal psychologists usually take basic social and cognitive principles and apply them to problems in the legal system, such as eyewitness memory, jury decision making, investigations and interviews. The area of psychology and law deals with all issues that lie at the intersection of human behavior and the law. This encompasses issues that deal with criminal behavior

associated with mental illness, police procedures and practices, how to improve the regulation of human behavior through laws, and how basic cognitive research can have important implications for legal issues. The term "psychology and law" encompasses individuals who work as 'forensic psychologists '(clinicians dealing with mentally ill offenders), criminal psychologists, legal psychologists, and any individual working with the topics of psychology and law. James Ogloff (2002) prefers the term "legal psychology" over psychology and law, and defines the field as: "Legal psychology is the scientific study of the effect of the law on people; and the effect people have on the law. Legal psychology also includes the application of the study and practice of psychology to legal institutions and people who come into contact with the law." (pp. 13; Ogloff, 2002′)

Together, **legal psychology** and forensic psychology from the field more generally[105]recognized as "psychology and law". Following earlier efforts by psychologists to address legal issues, psychology and law became a field of study in the 1960s as part of an effort to enhance justice, though that originating concern has lessened over time.[106] The multidisciplinary American Psychological Association's Division 41, the American Psychology-Law Society, is active with the goal of promoting the contributions of psychology to the understanding of law and legal systems through research, as well as providing education to psychologists in legal issues and providing education to legal

[105]Michael J. Saks (1986). The Law Does Not Live on Eyewitness Testimony Alone. Law and Human Behavior, 10, 279-280.

[106]American Psychology and the Law Society". Retrieved 2007-09-12.

personnel on psychological issues. Further, its mandate is to inform the psychological and legal communities and the public at large of current research, educational, and service in the area of psychology and law. There are similar societies in Britain and Europe.

For a time, legal psychology researchers were primarily focused on issues related to eyewitness testimony and jury decision-making; so much so, that the editor of Law and Human Behavior, the premier legal psychology journal, implored researchers to expand the scope of their research and move on to other areas.[107] There are several legal psychology journals, including Law and Human Behavior, Psychology, Public Policy and Law, Psychology, Crime, and Law, and Journal of Psychiatry, Psychology and Law that focus on general topics of criminology, and the criminal justice system. In addition, research by legal psychologists is regularly published in more general journals that cover both basic and applied research areas.

In March 1893 J. McKeen Cattell posted questions to fifty-six of his students at Columbia University, the questions he asked his students were comparable to those asked in a court of justice. What he found was that it was reasonable to conclude eyewitness accounts of events were unreliable. His students were all sure they were mostly correct, even when they weren't, and some were hesitant when they were in fact correct. He could not figure out specifically why each student had inaccurate testimonies. Cattell suggested that “an unscrupulous attorney” could discredit a witness who is being truthful by asking

[107]Michael J. Saks (1986). The Law Does Not Live on Eyewitness Testimony Alone. Law and Human Behavior, 10, 279-280.

"cunningly selected questions". Although a jury, or the judge, should know how normal errors are in eyewitness testimonies given different conditions. However, even Cattell was shocked by the level of incorrectness displayed by his students. Cattell's research has been depicted as the foundation of forensic psychology in the United States. His research is still widely considered a prevailing research interest in legal psychology.[4] It has been thought that in America psychologists have been used as expert witnesses in court testimonies since the early 1920s. Consultation within civil courts was most common, during this time criminal courts rarely consulted with psychologists. Psychologists were not considered medical experts, those who were like, physicians and psychiatrists, in the past were the ones consulted for criminal testimonies. [108]This could be because in criminal cases, the defendant's mental state almost never mattered "As a general rule, only medical men—that is, persons licensed by law to practice the profession of medicine—can testify as experts on the question of insanity; and the propriety of this general limitation is too patent to permit discussion.

Roles of a Legal Psychologist

Academics and research

Many legal psychologists work as professors in university psychology departments, criminal justice departments or law schools. Like other professors, legal psychologists generally conduct

[108]The Mind of the Criminal, Reid Griffith Fontaine

and publish empirical research, teach various classes, and mentor graduate and undergraduate students. Many legal psychologists also conduct research in a more general area of psychology (e.g., social, clinical, cognitive) with only a tangential legal focus. Those legal psychologists who work in law schools almost always hold a JD in addition to a PhD

Expert witnesses

Psychologists specifically trained in legal issues, as well as those with no formal training, are often called by legal parties to testify as expert witnesses. In criminal trials, an expert witness may be called to testify about eyewitness memory, mistaken identity, competence to stand trial, the propensity of a death-qualified jury to also be "pro-guilt", etc. Psychologists who focus on clinical issues often testify specifically about a defendant's competence, intelligence, etc. More general testimony about perceptual issues (e.g., adequacy of police sirens) may also come up in trial. Experts, particularly psychology experts, are often accused of being "hired guns" or "stating the obvious"] Eyewitness memory experts, such as Elizabeth Loftus, are often discounted by judges and lawyers with no empirical training because their research utilizes undergraduate students and "unrealistic" scenarios. If both sides have psychological witnesses, jurors may have the daunting task of assessing difficult scientific information.

Policy making and legislative guidance

Psychologists employed at public policy centers may attempt to influence legislative policy or may be called upon by state (or

national) lawmakers to address some policy issue through empirical research. A psychologist working in public policy might suggest laws or help to evaluate a new legal practice (e.g., eyewitness lineups).[109]

Advisory roles

Legal psychologists may hold advisory roles in court systems. They may advise legal decision makers, particularly judges, on psychological findings pertaining to issues in a case. The psychologist who acts as a court adviser provides similar input to one acting as an expert witness, but acts out of the domain of an adversarial system.[110]

Amicus briefs

Psychologists can provide an amicus brief to the court. The American Psychological Association has provided briefs concerning mental illness, retardation and other factors. The amicus brief usually contains an opinion backed by scientific citations and statistics. The impact of an amicus brief by a psychological association is questionable. For instance, Justice Powell[111] once called a reliance on statistics "numerology" and discounted results of several empirical studies. Judges who have no formal scientific training also may critique experimental methods, and some feel that

[109]Examples of legal psychologists in these positions can be found at the American Bar Foundation (Website) and Federal Judicial Center (Website), among others
[110]See, e.g., Court Appointed Scientific Expert Program Archived 2008-02-29 at the Way back Machine, American Association for the Advancement of Science

[111] Ballew v. Georgia

judges only cite an amicus brief when the brief supports the judge's personal beliefs.

Trial consulting

Some legal psychologists work in trial consulting. No special training nor certification is needed to be a trial consultant, though an advanced degree is generally welcomed by those who would hire the trial consultant. The American Society of Trial Consultants does have a code of ethics for members, but there are no legally binding ethical rules for consultants.[112]

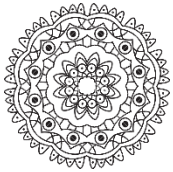
Some psychologists who work in academics are hired as trial consultants when their expertise can be useful to a particular case. Other psychologists/consultants work for or with established trial consultant firms. The practice of law firms hiring "in-house" trial consultants is becoming more popular, but these consultants usually can also be used by the firms as practicing attorneys.

Trial consultants perform a variety of services for lawyers, such as picking jurors (usually relying on in-house or published statistical studies) or performing "mock trials" with focus groups. Trial consultants work on all stages of a case from helping to organize testimony, preparing witnesses to testify, picking juries, and even arranging "shadow jurors" to watch the trial unfold and provide input on the trial. There is some debate on whether the work of a

[112] An overview of the trial consulting process is provided by the American Society of Trial Consultants, ASTC Website

trial consultant is protected under attorney-client privilege, especially when the consultant is hired by a party in the case and not by an attorney.

Forensic Psychology



Forensic psychologists have many performances in the criminal justice system, which focus on three areas, law enforcement, corrections and courts. Three examples, one for each part, are police psychologists who work in police agencies, prison psychologists who work in correctional institutions in our country and expert witnesses who provide information to the courts. The relationship between the use of psychology and the law are getting closer every day, this opens the possibility to new careers and areas in which it must be perfected. Going for the future every day in my view is not going to be an option but rather a part of the justice system. Following the standards and the improvement of the system will go to the result of a fair justice for all.

Forensic psychology involves the application of psychological knowledge and methods to help answer legal questions arising in civil or criminal proceedings. Historically, forensic psychology was defined narrowly as the application of clinical psychological knowledge to criminal cases or questions in criminal justice settings.[1] Contemporary definitions of forensic psychology recognize that several subfields of psychology apply "the scientific, technical, or specialized knowledge of psychology to the law."[

Forensic psychology means applying psychology in understanding crimes and other legal concerns. American psychologists have defined forensic psychology as the application of clinical specialties in the legal arena. The ones who are experts in forensic law help with legal proceedings in different manners:

Assessment of mental condition– Forensic psychology helps in analyzing the mental condition with regards to the insanity plea, which is a tactic adapted by people to avoid death sentence and imprisonment. Hence, forensic psychology helps in determining whether a person is really suffering from any mental disorder or not.

Prediction of violence and risk management– Forensic psychology also helps in determining whether a person has violent tendencies or not; this indicates the harm that can be inflicted by such person either upon himself or on others. This method is mainly applied when an accused is imprisoned or is set free.

Assessment of Child Custody in Divorce– Determining the custody of a child after a divorce is the most crucial question and also a difficult decision to make as the child's future is at stake. So, the forensic psychologists analyze the couple and after evaluating the situation, they recommend to the judge or jury as to whom the custody of the child should be given.

Competency to stand trial– Since the trial process is too long and tiring, it cannot be handled by mentally or physically ill people. Hence, forensic psychology helps in determining who can endure the trial and who should be immediately sent for psychiatric treatment.

According to Meyer and Allen (1994) state that organizational commitment is "a psychological state that characterizes the employee's relationships with the organization, has implications for the decision to continue membership in the organization. Other researchers use similar definitions that refer to an employee's attachment, goal congruency, identification, loyalty and adherence to their organization's rules and regulations.

Value of competence, in any working field, workers are supposed demonstrate both technical competence (i.e., the ability to complete tasks for a business unit) and relational competence (i.e., ability to relate well with customers, team members and other fellow workers) in order to be perceived as capable, credible, and socially respectable in that working environment. The value of competence is positively related to how your fellow workers perceive you. Team building refers to the process of establishing and developing a greater sense of collaboration and trust between team members. Interactive exercises, team assessments, and group discussions enable groups to cultivate this greater sense of teamwork.

Team building activities are stimulating problem-solving tasks designed to help group members develop their capacity to work effectively together. When a team in an organizational development context embarks upon a process of self-assessment in order to gauge its own effectiveness and thereby improve performance, it can be argued that it is engaging in team building. To assess itself, a team seeks feedback to find out both its current strengths as a team and its current weaknesses and find way forward for solving the weaknesses. To improve its current performance, a team uses the feedback from

the team assessment in order to identify any gap between the desired state and the actual state, design a gap-closure strategy and then implement the strategy.[113]

Criminal psychology is also related to legal psychology and forensic psychology. and crime investigations. Psychologists are licensed professionals that can assess both mental and physical states. Profilers look for patterns in behaviors to link the individual(s) behind a crime. A group effort attempts to answer the most common psychological questions: If there is a risk of a sexual predator re-offending if put back in society; if an offender is competent to stand trial; whether or not an offender was sane/insane at the time of the offense.

Criminal psychologists can be used to do investigative work, like examine photographs of a crime, or conduct an interview with a suspect. They sometimes have to formulate a hypothesis, in order to assess what an offender is going to do next, after they have broken the law[114]

The question of competency to stand trial is a question of an offender's current state of mind. This assesses the offender's ability to understand the charges against them, the possible outcomes of being convicted/acquitted of these charges and their ability to assist

[113]Turning points at trial, Shane Read

[114]). "[The mind on the stage of justice: the formation of criminal psychology in the 19th century and its interdisciplinary research]". Berichte Zur Wissenschaftsgeschichte. **30** (3): 235–254. doi:10.1002/bewi.200701101. ISSN 0170-6233. PMID 18173066

their attorney with their defense. The question of sanity/insanity or criminal responsibility is an assessment of the offender's state of mind at the time of the crime. This refers to their ability to understand right from wrong and what is against the law. The insanity defense is rarely used, as it is very difficult to prove. If declared insane, an offender may be committed to a secure hospital facility, potentially for much longer than they would have served in prison[115].

Forensic Psychology

Forensic psychology means applying psychology in understanding crimes and other legal concerns. American psychologists have defined forensic psychology as the application of clinical specialties in the legal arena. The ones who are experts in forensic law help with legal proceedings in different manners:

a) **Assessment of mental condition–** Forensic psychology helps in analyzing the mental condition with regards to the insanity plea, which is a tactic adapted by people to avoid death sentence and imprisonment. Hence, forensic psychology helps in determining whether a person is really suffering from any mental disorder or not.

b) **Prediction of violence and risk management–** Forensic psychology also helps in determining whether a person has violent tendencies or not; this indicates the harm that can be

[115]Laura (October 29, 2019). "George Metesky | American terrorist". Encyclopedia Britannica. Retrieved 2020-01-29.

inflicted by such person either upon himself or on others. This method is mainly applied when an accused is imprisoned or is set free.

c) **Assessment of Child Custody in Divorce**– Determining the custody of a child after a divorce is the most crucial question and also a difficult decision to make as the child's future is at stake. So, the forensic psychologists analyse the couple and after evaluating the situation, they recommend to the judge or jury as to whom the custody of the child should be given.

d) **Competency to stand trial**– Since the trial process is too long and tiring, it cannot be handled by mentally or physically ill people. Hence, forensic psychology helps in determining who can endure the trial and who should be immediately sent for psychiatric treatment.

Some of the positions that can be assumed in the area of psychology and law are outlined below.

Clinical forensic psychology

Clinical forensic psychologists assess, diagnose and treat mentally ill offenders, usually in a clinical setting. Most commonly, forensic psychologists administer treatment to offenders that have been deemed mentally ill. Treatment is typically part of, or all of, a sentence mandated by the correctional system to mentally ill offenders, or part of rehabilitation efforts. These professionals are also sometimes consulted by lawyers to administer diagnostic tests

and determine whether an individual is suffering from a mental illness that could render that individual not responsible, or less responsible, for their actions in the eyes of the law. Or as Kirk, Rogers and Otto (2002 as cited in Ogloff, 2002*) put it:

"... (Forensic Assessment) involves the assessment of those involved in criminal and civil litigation for the purposes of assisting legal decision makers in making better informed decisions about litigants, or helping attorneys more effectively advocate for their clients in the course of litigation.... using reliable, valid techniques and measures, and the communication of these results in a concise, accurate fashion." (p. 119)

Forensic risk assessment

Another important part of psychology and law is trying to assess, based on empirical research, whether, when and under what conditions we should release an offender back into the community. This kind of work is called Risk Assessment. Risk assessment is

"The process of understanding hazards to minimize their negative consequences" (p. 147; McNiel et al, 2002 as cited in Ogloff, 2002).

It involves using empirical research on patterns of offending, usually combined with professional judgment, to estimate how likely an offender is to re-offend upon release into the community. This is of particular interest in the area of violent crime. Estimates are usually given on a scale of high to low risk. This work is highly contested by some, given the concern that no-one can ever predict the future and that we cannot apply group-level statistics to individuals with any level of accuracy. Ultimately, someone needs to help legal

professionals decide whether and under what conditions to release offenders, and we prefer they base their decision on research and professional judgment rather than purely on intuition.

Competency assessment and expert testimony

Two jobs that legal psychologists can assume in court directly are competency to stand trial assessments and giving expert testimony. These two jobs often involve the professional actually appearing in court and giving a statement. "Competency to stand trial" assessment is the most common pretrial evaluation, and involves testing an individual who has been called to appear in court on their understanding of the basic concepts and procedures used in court. This means understanding such concepts as "truth", and understanding what the implications of attending court can or will be. Both children and adults can undergo competency evaluations although adults usually only undergo these assessments if they have been deemed mentally ill, or have a low IQ.[116]

An individual who has been deemed an "expert" by the academic community of his/her field, and can contribute to the case at hand, can be invited to give an expert testimony. Expert testimony, as given by a psychology and law professional, can be a statement on how basic cognitive processes can affect the evidence provided in the case, on the competency of a given witness, on a clinical evaluation of one of the actors involved in the case, or on any related topic. Only few psychology and law specialists are ever asked to attend court and

[116]Dark psychology, Robert Dale

provide expert testimony, but when they are, experts can make a real difference in the outcomes of a case. Unfortunately, experts typically waffle and use too much jargon to be understood by any of the legal personnel – but IF executed properly, an expert can enlighten judge and jury with academic and professional wisdom. Mind you, an expert's role is never to be a trier of fact and to determine guilt – he or she is merely invited for input that can help the actual trier of fact, the judge or jury, in their decision.

Legal psychology deals with cognitive and social principles and their usage in the legal system. It is based on empirical and psychological research of law along with legal institutions. It is different from forensic psychology which is based on the clinical orientation on experimentation. The relevance of legal psychology can be seen in legal proceedings in different manners:

i) **Academics and research**– Legal psychologists basically conduct empirical research on new legal topics, which are yet to be popularized. They also work as mentors and guide the upcoming legal representatives.

ii) **Advisory role**– Many a time it is seen that legal psychologists plays an advisory role in court systems. They advise the judges and legal decision makers on some psychological issues pertaining to the concerned case.

i) **Trial consulting**– Sometimes, legal psychologists also work for trial consulting. In some cases, a psychologist who works as an academician is called up as a trial

consultant when their expertise is helpful in any particular case. Trial consultants play different roles such as picking up the jurors, performing mock trials, etc.

ii) **Policy making and legislative guidance** A legal psychologist's work is based on empirical research and many a time there is a need to establish some policies based on empirical research. Hence, in those times of crises they help the state and national lawmakers.

iii) **Amicus briefs–** Amicus briefs primarily means to provide opinions with a scientific backup and statistics. But the assistance which a legal professional provides in the form of amicus briefs is questionable.

iv) **Expert witnesses–** Legal psychologists are well trained to handle legal issues even though they have no formal training. They are helpful in testifying the witnesses. They also test the memory of eye witnesses whereas the forensic psychologist particularly testifies the competency of the defendant.

Research

A large number of those working in the area of psychology and law have academic jobs and conduct research on important issues in our field. Some of the main research areas are briefly described below.

Eyewitness testimony and interrogations

One of the areas in forensic psychology that deals with the judicial system itself, rather than with the perpetrators of crime is the area of eyewitness testimony.

"Research on eyewitness testimony examines the reasons for errors in eyewitness memory, some of which have led to wrongful imprisonment. The research has spawned recommendations on how these errors can be minimized." (p. 200; Lindsay, Brigman, Brimacombe & Wells, 2002 as cited in Ogloff, 2002*). Eyewitnesses are usually a key component to legal cases – with their statements often taken at face value and their memories not adequately questioned. Eyewitness testimony is the account a bystander or victim gives in the courtroom, describing what that person observed that occurred during the specific incident under investigation. Ideally this recollection of events is detailed; however, this is not always the case. This recollection is used as evidence to show what happened from a witness' point of view. Memory recall has been considered a credible source in the past, but has recently come under attack as forensics can now support psychologists in their claim that memories and individual perceptions can be unreliable, manipulated, and biased. As a result of this, many countries, and states within the United States, are now attempting to make changes in how eyewitness testimony is presented in court. Eyewitness testimony is a specialized focus within cognitive psychology.[117]

[117]Psychology and Law, Amina Memon

Brain Development Associated With Eyewitness Testimony

Brain development is an after-forward process; from the occipital lobe (visual), to the temporal lobe (sensory, auditory and memory), to the parietal lobe (motor, pain, temperature, and stress), and finally to the frontal lobe (language, reasoning, planning, and emotion).[4] All of these brain regions work together to build up our eyewitness memory.

Generally, infants are born with formed brain systems and their brains develop very rapidly during the first three years. The size of a newborn brain is approximately 400g and continues to grow to 1100g at the age of three, which is close to the size of an adult brain (1300-1400g).

Although infants are born with a properly formed brain, they are still far away from full development. The glial cells, which play a vital role in proper brain function (e.g. insulating nerve cells with myelin), keep growing to divide and multiply after birth.[7] However, to have a fully developed eyewitness memory, the development of gray matter, white matter, the dentate gyrus and density of synapses are highly necessary.

The volume of white matter starts its linear increase from age four to 20, but cortical gray matter is decreases in the parietal, occipital and temporal regions starting from age four, continually changing until after age 12.The development of the dentate gyrus starts forming at 12 to 15 months in the hippocampus, which is essential for the formation of declarative memory in eyewitness testimony.[5] After

the formation of the dentate gyrus of the hippocampus, the density of synapses in the prefrontal cortex, which is involved in eyewitness memory, is peaks in its development during 15 to 24 months, changing until the age of adolescence.

Research into the area suggests, however, that Eyewitnesses are prone to certain kinds of memory errors because of basic perceptual biases, their responses to suggestive questioning, and the malleability of the memory system. Basic memory errors are in fact often generated or consolidated by common policing techniques such as interviewing methods and the way police lineups are structured. Psychology and Law specialists that work in this field are often baffled by the amount of false information generated by such procedures, and attempt to teach legal professionals strategies that avoid biasing and changing witness's memories.

Factors affecting eyewitness testimony.

Retroactive interference encourages incidental forgetting, in which the newly learned information impairs the retrieval of previously learned knowledge, especially for similar and related information] For example, if you have already learned about proactive interference and recently learned new information about retroactive interference, the knowledge you learned about retroactive interference has the tendency to impede the retrieval of the knowledge of proactive interference.

The passage of time is not of major importance but still has relevance to retroactive interference. The results of a study on rugby players by

Hitch and Baddeley showed that trace decay contributes relatively no significant effects on retroactive recallconsolidation of the previously learned knowledge and the new information is important. If the previously learned knowledge is well consolidated in memory, the impeding influence caused by the new encoding has less effect; inversely, if the newly learned information is better encoded than the old knowledge, the interference is greater. This is especially true when the previously learned knowledge is simply encoded in short-term and working memorybasically, the low level of consolidation. The similarity between the new information and old knowledge can have an effect on performance as well. When the recently acquired information is phonologically and semantically similar with the known knowledge, the rate of retroactive interference is increased through confusion between the two materials.

The encoding process, retrieval traces and contextual cues of the newly learned information play significant roles in impairment. The ways that information is encoded can impair the retrieval performance of that information. The better encoding, the better retrieval will be, especially under circumstances of appropriate retrieval traces and sufficient contextual cues. How to retrieve the encoded information, a.k.a. retrieval strategy, is also essential for preventing retroactive interference. The failure in binding and tracking the contextual information has an increased impact on the retroactive interference effect]

Retroactive interference can also be attributed to personal experiences and memories. The schematic knowledge in memory is

useful in forming expectations and drawing inferences for understanding, but it is also able to cause distortion and interference when the encoding information is inconsistent with what has been stored. In addition, the extent of knowledge stored in memory affects the accuracy of the encoding and storing of information knowing a lot about a subject helps to improve the accuracy of other related subjects. A lack of essential experience can interfere with the processes of learned knowledge and increase the risk of retroactive interference when learning new information about the already learned subject.[118]

Memory capacity involves the state of maturity and plasticity of the brain and can impair memory performance especially in terms of interference. The development of brain function has a great influence on memory capacity which is responsible for the performance of memory. This includes verbal expression, object recognition, etc.

In children, memory capacity, source monitoring, and language development are limited because their brains are not yet mature. These limitations enhance the effect of retroactive interference on the accuracy of a child's eyewitness testimony. For instance, a five-year-old child is generally able to tell the genital contact of a sexual abuse perpetrator, but it is difficult for the child to identify other features such as facial features and clothing due to their underdeveloped memory capacity. The undeveloped conceptual functions of a child's brain restrict their capacities in object

[118]Psychological Profiling and Criminal Investigations, Laurence Alison

recognition, social cognition, language, and human capacity (the ability to remember the past and imagine the future), and impairs the retrieval and accuracy of their eyewitness memory.] Due to their young age, children have less personal experience, making them vulnerable to impairments from retroactive interference. Therefore, when used as eyewitnesses, it is less possible for them to encode and store the features of the criminal in an appropriate or sufficient way, which impedes the accuracy of the eyewitness retrieval.

Stress and trauma

There are many reasons why children eyewitness testimonies may not be completely accurate, one of which could be stress and trauma. When children experience a traumatic and stressful event, their ability to accurately recall the event becomes impaired.

The American Psychological Association often claims that emotional events are remembered less accurately than details of neutral or everyday events. Their explanation for why stress and trauma could impair memories under high emotional arousal is a decrease in the available processing capacity which leads to lower memory processing [

Stressful events can also have positive effects on children. Physiological evidence indicates that stressful events are retained particularly well the more children experience positive events in their lives.

Other theorists have relied on The Yerkes-Dodson Law for explaining the effects of stress on a child's memories. The Yerkes-

Dodson Law states that too little or too much stress is associated with a decline in memory. Too much stress can narrow someone's attention for stressful memories but aid in consolidation so that details are attended to. Goodman gave inoculations to 76 children between the ages of three and seven and found that those who were most severely distressed by the experience (those who screamed, cried, struggled) later remembered more about the event and were more resistant to suggestion than those who did not experience distress.

In order to help reduce stress and trauma to the child, some studies have shown that good social support during the interviewing process can help children reduce their anxiety. If an interviewer is supportive by smiling, nodding his head and compliments the child during the interviewing process the child's anxiety decreased by a decent margin. The study also showed that the less supportive an interviewer was, the higher the child's anxiety rose.

Early research has studied the impacts of emotion on memory. Sigmund Freud used his psychoanalytic approach to study people with hysteria. Freud found that people are constantly confronted with thoughts and some of the memories are too painful, so people become repressed. Another method by Kuehn analyzed the data from police reports about victims experiencing traumatic events. He looked specifically at how capable these victims were in being able to provide a description of the traumatic event in a police report. These victims experienced two homicides, 22 rapes, 15 assaults and 61 robberies, respectively. He found that victims of robberies were able to provide more detailed description for the events than did victims

of rape or assault. He also found that people who were injured provided more less of description than non-injured people.[119]

Stress and trauma can also cause create other problems in eyewitness testimonies such as repression. Repression influences eyewitness testimonies because if a child goes through a stressful or traumatic event, they will sometimes repress their memories. According to Freud's theory on repression, a repressed memory is the memory of a traumatic event unconsciously retained in the mind, where it is said to adversely affect conscious thought, desire, and action. As a result, children will have trouble recalling this information or accessing it consciously. If a child who has witnessed a traumatic event is used as an eyewitness, they may have a harder time recalling the event due to the possibility of memory repression.

According to the journal of Law and Human Behavior, children who have been through traumatic events will find it harder to remember a regular event as opposed to a non-traumatic event. In a study conducted by Goodman, they found that non-abused children were more accurate in answering specific questions and made fewer errors in identifying an unfamiliar person in pictures.

Intelligence

Another factor that has been studied as a contributing variable in the accuracy of child eyewitness testimony is intelligence. Individual

[119] A Frieberg, "'Out of Mind, Out of Sight': The Disposition of Mentally Disordered Persons Involved in Criminal Proceedings

differences in intelligence, based on IQ, have been used to explain variances in memory performance among children giving eyewitness testimonies.

The ability for a child to give a free narrative of what happened involves the practice of episodic memory and working memory, which are both influenced by an individual's capacity to cognitively process events A child's fluid and crystallized intelligence are theorized to predict recall. Evidence has shown that higher verbal intelligence is positively correlated with memory performance and negatively correlated with suggestibility in children.

Further analyses of research concerning intelligence and free recall have shown that there are relatively large differences in intelligence when a positive correlation between recall and intelligence is demonstrated. This implies that intelligence significantly influences child eyewitness memory when comparing high and low levels; however, small differences in intelligence are not significant.

Another finding in the influence of intelligence on a memory recall in children is that it seems to be age-dependent. Differences in age group explain the variance in which intelligence has an effect on memory performance. Older children have higher correlations of intelligence and recall, whereas chronological age is more significant of a factor than intelligence for young children's eyewitness memory. More specifically, a study examining the influence of fluid intelligence on recall of children's eyewitness memory regarding a videotaped event found that there was not a positive relationship between fluid intelligence and free narrative for six- and eight-year-olds; however, the positive relationship was present for ten-year-old.

Likewise, in studies of real cases of children testimony, the general finding is that intelligence is a considerable predictor for witness reports for children in their late elementary school years, but not for children up to the age of six. Therefore, the effect of individual differences in intelligence on eyewitness memory increases with the child's age.

The range in children's intellectual capacities may explain the positive relationship between intelligence and eyewitness memory. Intellectually disabled children and children with below average to very low IQ's have been included in studies examining the influence of intelligence on memory recall. It was found that when giving an eyewitness testimony, there is a stronger positive relationship between intelligence and recall for intellectually disabled children, with recall accuracy being poorer with children of lower IQ than for children with average or high intelligence. A possible explanation for this may be that in comparison to a child of mainstream intelligence, children of lower intelligence encode weaker memory traces of events.

Another explanation is that individuals with intellectual disabilities have poorer cognitive and language functioning, which would directly impact their performance on memory and language tasks. A study examining the extent to which the degree of intellectual disability (mild to moderate) has an effect on the relationship between intelligence and witness memory found that there was no significant difference in same-aged children with mild intellectual disabilities (IQ 55-79) and children with normal intelligence (IQ 80-

100). Individuals with moderate intellectual disabilities (IQ 40-54) performed significantly worse on almost every eyewitness measure.

Suggestibility

In general, the judicial system has always been cautious when using children as eyewitnesses resulting in rules that demand all child testimonies be confirmed by designated officials prior to its acceptance as evidence in the court of law. One of the reasons for this partiality is suggestibilitya state in which a person will accept the suggestions of another person and act accordingly. With regards to court proceedings, a child's testimony or recollection of an event is especially vulnerable to leading questions]

Although suggestibility decreases with age, there is a growing consensus that the presence of interplay between individual characteristics and situational factors may affect suggestibility, in this case, of children. This explains why children of the same age may significantly vary in levels of suggestibility.

There are several factors that contribute to a child's suggestibility. Age-related differences are often synonymous with developmental differences, though the latter, when not comparing two different age groups, has no effect on a child's suggestibility. Basically, individual differences between children of the same age group do not play a significant role in a child's level of suggestibility. If there is a difference in suggestibility levels of children that are of the same age, they are most likely due to maturational differences in specific cognitive skills.

Studies also show that it is not the leading questions themselves that can alter a child's recall of the event, but the event in question. When children are questioned about true events that they actually participated in, they are much more accurate with their answers. With suggested events in which the questioner is suggesting the child may have been involved, children become more suggestible and easier to influence. Younger children also have a larger tendency to change their answers when making "yes," "no," or "I don't know" statements

It is yet to be determined whether there is a particular age or level of specific cognitive functioning at which suggestibility becomes more of a universal trait or characteristic; however, a study involving four-year-old suggests that due to their development of theory of mind, this may be close to the age at which suggestibility begins its 'trait-like' transition.

Emotion can also make children more suggestible. When using sad stories, children are much more vulnerable to misleading questions than when using angry or happy events. In an experiment, when asked to recall a sad story previously read to them, children were much more descriptive and detailed when answering misleading questions, as opposed to when regular, stories were usedVery similar results were found in a separate experiment in which stress was induced in children

Children were also more likely to agree with misleading questions and more likely to incorporate fabricated details when asked to recall the event. In this experiment using sad, angry or happy stories, it is at age six that the researchers deemed the average age at which

suggestibility levels off. As with most factors that elicit suggestibility, susceptibility to emotional influences decrease with age. Possible reasons for this may be the increase in narrative skill, knowledge, memory abilities, as well as the ability to properly encode memories. It is also implied that older children may be less trusting of adults' omniscience and more willing to contradict them.

In 1999, Ceci and Scullin developed the Video Suggestibility Scale for Children (VSSC), which measures individual differences in suggestibility in preschool children. The scale was administered to children of 3–5 years of age.

The results suggested that children tend to respond affirmatively to suggestive questions and change their answers in response to negative ones. Older children were able to recall the events in the video better than younger children, but were also more likely to shift their answers in response to negative feedback. Overall, this scale and study supports Gudjonsson's view that there are at least two basic types of interrogative suggestibility.

Source misattribution

The concepts of source monitoring and source misattribution have been implicated as a reason for the construction of inaccurate memory reports. Source monitoring refers to understanding the origin of one's memories. Source misattributions are issues in retrieval in which the subject struggles to separate two or more sources of memory; it is not an issue necessarily with the memory itself. In other words, source misattributions are errors in source

monitoring. The subject may have trouble discriminating between his or her actual perception of an event and their imagined version of these memories (Ceci et al., 1994). Some research suggests that children have more issues with source misattribution compared to adults. Children as old as nine years may have difficulty in discriminating between things they actually did and things that they imagined themselves doing (Foley & Johnson, 1985). Ceci et al. (1994) researched source monitoring and source misattributions among pre-school aged children. 96 pre-school aged children from central New York State were chosen to participate. After the main group of children was selected, they were divided into smaller groups based on their ages: the younger group consisted of three- and four-year-old and the older group consisted of five- and six-year-olds. To carry out the experiment, the children's parents were interviewed to find out about both positive and negative events that did indeed occur in the child's life. The parents were then asked to verify what certain events did not occur in their child's life. Following the parental interview, the children were interviewed and shown a list of events that happened to them and events that did not happen to them. The events that did actually happen to them were quite salient and the events that did not happen to them were very specific. Of the events that did not happen to the children, one of them described the child getting his or her hand caught in a mousetrap and then going to the hospital to get it removed. The other one entailed going on a hot air balloon ride. The children were asked to decide which events actually happened to them and which ones did not. These interviews with the children happened on about seven or eight occasions, each spaced out by approximately a week. The spacing of the interviews is important, as the researchers used timing as a

variable that affects source monitoring. At the final interview, a novel interviewer that the children had not met before asked them to elaborate as much as they could about all of the events, both real and imagined. A new interviewer was used so that the answers the children gave were neutral and not influenced by previous interviewers in any way. They were also asked to rate their confidence level for every detail given about each event.[120]

Ceci et al. (1994) hypothesized that the children would confirm the events that did happen and deny the false events that did not happen. However, this was not the case in their findings; both groups of young children had fallen victim to false memories. When analyzing the results for the two different age groups, the effect of age becomes even more apparent. The children from the 3- and 4-year-old group confirmed false events almost twice as often as the 5- and 6-year-old children. To test the child's apparent credibility, the researchers had over 100 professionals in the field of psychology view recordings of the children during their final session recounting both the actual and false memories. As it happened, many of these professionals were fooled by the children's recounts and were unable to distinguish the false memories from the real ones (Ceci et al., 1994).

Script-based inferences

Erskine, Markham, and Howie (2001) discuss script-based inferences and their effects on memory retrieval and eyewitness testimony. Scripts are schemas for specific events that are

[120]The tools of Argument, Joel P. Trachtman

constructed from experience (Lindsay, J., 2014). For example, when you walk into a restaurant, you generally known to tell the host or hostess the number of people in your party; once you are seated at your table, you know you must decide what to order. These commonly known actions are part of the general restaurant script. Scripts are usually beneficial in that they help organize one's thoughts and they facilitate a better understanding of a situation (Abelson, 1981). However, these script biases can also have effects that are damaging in the retrieval of accurate memories. Scripts can lead people to report details of events that did not happen, even if those details fit with the script of the event[121].

Erskine, Markham, and Howie (2001) studied how scripts can affect accurate memory retrieval. A group of 60 5- and 6-year-olds and a group of 60 9- and 10-year-olds were shown one of two slide sequences portraying eating at a McDonald's. McDonald's was chosen because it is a script that most American children reliably have in their cognition starting from around age 4. Half of the younger group and half of the older group were shown a slide sequence in which three script-central details were left out of the sequence. A central detail could be ordering the food at the counter or eating the food in the restaurant. The other half of the participants were shown a slide sequence in which three script-peripheral details were left out. A peripheral detail could be spilling a drink or tying a shoelace. These details did not infringe upon the traditional McDonald's script, but they are not inherently a central part of the script either. Once the children had seen the slide

[121] ibid

sequence, they were placed into one of two delay conditions: within 90 minutes of viewing the slides, or a week after viewing the slides. After the delay, they were asked to recall the slide sequence.[122] This study provided evidence that children will utilize scripts to make inferences about parts of a story (Erskine, Markham, & Howie, 2001). The researchers found that children in the younger group, the 5- and 6-year-olds, used incorrect script inferences more often than the children in the older group, the 9- and 10-year-olds. Additionally, the younger children did worse in both the immediate recall condition and the week-long delay condition. Both age groups used significantly more script inferences when they were asked to recall the slide sequence a week later compared to the 90-minute delay. These results were found for recall of script-central details. Neither the older nor the younger groups made a significant number of errors in recalling the script-peripheral details.

Socially encountered misinformation

Socially encountered misinformation also has the potential to distort children's memories. The misinformation effect occurs when our recall of a memory becomes distorted because of new information introduced after the initial event (Weiten, 2010). This is an extremely important topic to research, as in the judicial process misinformation is often disclosed during the initial interview phase. The interview is also the phase in which witnesses, specifically children, are most susceptible to suggestibility. A study conducted

[122] APA. (2019). Law & Psychology. Retrieved from https://www.apa.org/topics/law/

by Akehurst, Burden, and Buckle (2009) investigated the impact of socially supplied misinformation on children. Children witnessed an event and subsequently were exposed to two different types of misinformation about the event they saw: one from another person, a co-witness to the event, and one in the form of written information in either a newspaper or a magazine. The researchers thought that the children who received misleading information, both written and verbal, would be more suggestible than those who were not exposed to misleading information. First, they hypothesized that the children who were exposed to the misleading verbal information would be more susceptible to suggestion compared to the children who were exposed to the written misinformation (Akehurst, Burden, and Buckle, 2009). In addition to the different methods of delivery of the misinformation, Akehurst, Burden, and Buckle wanted to investigate the effects of time delay on the suggestibility of children. They hypothesized that after three months, the way in which the misinformation was delivered to the child would not matter as much, and the strength of the memory trace would become more prominent.

To carry out the experiment, Akehurst, Burden, and Buckle had a total of 105 participants aged between 9–11 years. These participants were shown a video of a woman arriving at the dentist for dental surgery, checking in at reception, and having her teeth looked at by the dentist. The woman was portrayed as afraid of the dentist, so the video had a negative emotional quality. After viewing the video, the children were given misinformation about the event either verbally or written based on the condition that they were placed in. In the written narrative condition, misinformation was

introduced, such as mislabeling the color of the woman's coat or mentioning that she was wearing glasses when she was not. In the co-witness, verbal misinformation condition, a confederate recited the same misinformation that was in the narrative condition. The only difference between the two conditions was the method in with the misinformation was delivered. The participants were interviewed twice following the receipt of the misinformation: once immediately after, and then three months later. In these interview sessions, the participants were asked to answer questions about the event solely based on what they had seen in the video.

Akehurst, Burden, and Buckle's (2009) study of misinformation provided evidence that 9- to 11-year-old children can be susceptible to suggestion and misinformation under the right conditions. The children were most susceptible in the interview right after they were given the misinformation, both verbally and written. This finding corresponds to their second hypothesis. Additionally, Akehurst, Burden, and Buckle (2009) found that children in the condition where the misinformation was provided socially and verbally via a confederate were more susceptible to recalling the misleading information compared to the children who received the misinformation in a written narrative, which corresponds to their first hypothesis. According to Tajfel and Turner (1986), people are more likely to believe information that they receive through a social route because of a need to affiliate with others. Children are specifically susceptible to social misinformation because they generally believe in the authority of adults simply based on the age difference. Thus, the effects of misinformation can be reduced if the

misleading information is not provided socially (Akehurst, Burden, and Buckle, 2009).[123]

Judges and jurors

When individuals are assigned Jury duty, common people are given the power to decide all, or part of, the fate of a fellow citizen. This carries inherent risks and problems with it because "common people" are often not familiar with judicial proceedings, the technical jargon used in court settings, are often presented with contradicting evidence by defense and prosecution, are often convinced by other members of the jury to give a certain verdict rather than by evidence presented in court, and cannot possibly understand "lawyer speak".

Lawyer speak is the confusing language used by Lawyers, often intentionally, that facilitates misunderstanding and miscommunication in court. Because the answers to Lawyers can often be interpreted in many ways, it is often used to discredit witnesses or experts, and greatly confuses jurors. Double negatives are a common example of this. Research into these kinds of problems is important because it provides insight into jury decision-making and dilemmas in court that can lead to miscarriages of justice. At the very least, we want jurors to understand the evidence and arguments that are presented to them in court, yet at the moment this is rarely

[123]Reading people, Jo-Ellan Dimitrius

the case. Psychology and law professionals hope to encourage evidence-based practice in court settings to help ensure fair trials.[124]

Children and the justice system

Children can come into contact with the criminal justice system in a variety of ways, from witnessing criminal events, to being the victims of crimes, even to perpetrating crimes. The nature of a child's often limited understanding of the world and the criminal justice system makes dealing with them inherently difficult.

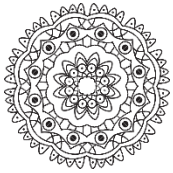
Some of the key issues when dealing with children are whether the child is capable of giving reliable eyewitness testimony in court, whether children can ever be held truly responsible for their actions, and how to determine whether a child has been abused. Legal Psychologists try to deal with these issues from an empirical background, by conducting research on such topics as child suggestibility, memory malleability and truth-telling behavior. Of course, the other end of the stick is trying to make contact with the legal system as pleasant as possible for the child, rather than confusing and traumatizing. That means offering measures such as closed-circuit television for when the child is ready to testify, and having psychologists or trained social workers supervise all interactions with legal personnel to ensure the child's full understanding and comfort.

---

[124] A Frieberg, "'Out of Mind, Out of Sight': The Disposition of Mentally Disordered Persons Involved in Criminal Proceedings

Ultimately, we know that especially young children have a bias to answer questions asked by adults in the way they think the adult wants, often regardless of the "truth". This means that open-ended questions and free narrative should be preferred ways to find out what a child actually experienced. Psychology and law specialists try to minimize children's biases, enhance their understanding of the judicial process, and thus help the justice system with its truth-seeking goal.

Child/Juvenile Delinquency



Juvenile delinquency, also known as juvenile offending, is the act of participating in unlawful behavior as a minor or individual younger than the statutory age of majority. In the Uganda, a juvenile delinquent is a person who commits a crime and is under a specific age. Per our laws , a juvenile delinquent is an individual under 18 years [125]of age .Just as there are differences in the maximum age of a juvenile delinquent, the minimum age for a child to be considered capable of delinquency or the age of criminal responsibility varies considerably between the age of 12 -18years sometimes even varies from 8 -18years.

Juvenile delinquents or juvenile offenders commit crimes ranging from status offenses such as, truancy, violating a curfew or underage drinking and smoking to more serious offenses categorized as property crimes, violent crimes, sexual offenses, and cybercrimes.

Some scholars have found an increase in arrests for youth and have concluded that this may reflect more aggressive criminal justice and zero-tolerance policies rather than changes in youth behavior Youth violence rates in the United States have dropped to approximately 12% of peak rates in 1993 according to official US

[125] Children Act Chapter 59

government statistics, suggesting that most juvenile offending is non-violent. Many delinquent acts can be attributed to the environmental factors such as family behavior or peer influence. One contributing factor that has gained attention in recent years is the school to prison pipeline. According to Diverse Education, nearly 75% of states have built more jails and prisons than colleges. CNN also provides a diagram that shows that cost per inmate is significantly higher in most states than cost per student. This shows that tax payers' dollars are going toward providing for prisoners rather than providing for the educational system and promoting the advancement of education. For every school that is built, the focus on punitive punishment has been seen to correlate with juvenile delinquency rates. Some have suggested shifting from zero tolerance policies to restorative justice approaches.

Juvenile detention centers, courts and electronic monitoring are common structures of the juvenile legal system. Juvenile courts are in place to address offenses for minors as civil rather than criminal cases in most instances. The frequency of use and structure of these courts in the United States varies by state. Depending on the type and severity of the offense committed, it is possible for people under 18 to be charged and treated as adults. Juvenile delinquency, or offending, is often separated into three categories: Delinquency, crimes committed by minors, which are dealt with by the juvenile courts and justice system;

Criminal behavior- crimes dealt with by the criminal justice system

Status offenses, offenses that are only classified as such because only a minor can commit them. One example of this is possession of alcohol by a minor. These offenses are also dealt with by the juvenile courts. Currently, there is not an agency whose jurisdiction is tracking worldwide juvenile delinquency but UNICEF estimates that over one million children are in some type of detention globally. Many countries do not keep records of the amount of delinquent or detained minors but of the ones that do, the United States has the highest number of juvenile delinquency cases. In the United States, the Office of Juvenile Justice and Delinquency Prevention compiles data concerning trends in juvenile delinquency. According to their most recent publication, 7 in 1000 juveniles in the US committed a serious crime in 2016. A serious crime is defined by the US Department of Justice as one of the following eight offenses: murder and non-negligent homicide, rape (legacy & revised), robbery, aggravated assault, burglary, motor vehicle theft, larceny-theft, and arson. According to research compiled by James Howell in 2009, the arrest rate for juveniles has been dropping consistently since its peak in 1994. Of the cases for juvenile delinquency that make it through the court system, probation is the most common consequence and males account for over 70% of the caseloads. [126]

According to developmental research by Moffitt (2006), there are two different types of offenders that emerge in adolescence. The first is an age specific offender, referred to as the adolescence-limited

[126]Psychological Profiling and Criminal Investigations, Laurence Alison

offender, for whom juvenile offending or delinquency begins and ends during their period of adolescence. Moffitt argues that most teenagers tend to show some form of antisocial or delinquent behavior during adolescence, it is therefore important to account for these behaviors in childhood in order to determine whether they will be adolescence-limited offenders or something more long term. The other type of offender is the repeat offender, referred to as the life-course-persistent offender, who begins offending or showing antisocial/aggressive behavior in adolescence (or even in childhood) and continues into adulthood.

Psychological assessment in juvenile delinquents

Juvenile delinquents are often diagnosed with different disorders. Around six to sixteen percent of male teens and two to nine percent of female teens have a conduct disorder. These can vary from oppositional-defiant disorder, which is not necessarily aggressive, to antisocial personality disorder, often diagnosed among psychopaths. A conduct disorder can develop during childhood and then manifest itself during adolescence.

Juvenile delinquents who have recurring encounters with the criminal justice system, or in other words those who are life-course-persistent offenders, are sometimes diagnosed with conduct disorders because they show a continuous disregard for their own and others safety and/or property. Once the juvenile continues to exhibit the same behavioral patterns and turns eighteen, he is then at risk of being diagnosed with antisocial personality disorder and

much more prone to become a serious criminal offender.[127] One of the main components used in diagnosing an adult with antisocial personality disorder consists of presenting documented history of conduct disorder before the age of 15. These two personality disorders are analogous in their erratic and aggressive behavior. This is why habitual juvenile offenders diagnosed with conduct disorder are likely to exhibit signs of antisocial personality disorder early in life and then as they mature. Sometimes these juveniles reach maturation and they develop into career criminals, or life-course-persistent offenders. "Career criminals begin committing antisocial behavior before entering grade school and are versatile in that they engage in an array of destructive behaviors, offend at exceedingly high rates, and are less likely to quit committing crime as they age.

Quantitative research was completed on 9,945 juvenile male offenders between the ages of 10 and 18 in Philadelphia, Pennsylvania in the 1970s. The longitudinal birth cohort was used to examine a trend among a small percentage of career criminals who accounted for the largest percentage of crime activity. The trend exhibited a new phenomenon among habitual offenders. The phenomenon indicated that only 6% of the youth qualified under their definition of a habitual offender (known today as life-course persistent offenders, or career criminals) and yet were responsible for 52% of the delinquency within the entire study. The same 6% of chronic offenders accounted for 71% of the murders and 69% of the aggravated assaults. His phenomenon was later researched among an

[127]The Mind of the Criminal, Reid Griffith Fontaine

adult population in 1977 and resulted in similar findings. S. A. Mednick did a birth cohort of 30,000 males and found that 1% of the males were responsible for more than half of the criminal activity.[61] The habitual crime behavior found among juveniles is similar to that of adults. As stated, before most life-course persistent offenders begin exhibiting antisocial, violent, and/or delinquent behavior, prior to adolescence. Therefore, while there is a high rate of juvenile delinquency, it is the small percentage of life-course persistent, career criminals that are responsible for most of the violent crimes.

Child testimony in court voire dire

Similar to adults, children who testify must undergo a testimony process in order to determine their relative competency, reliability, and credibility. This is important because trauma resulting from exposure to an open courtroom or confrontation with a defendant can ultimately lead to inaccurate testimony. There are several similarities and differences between the competency evaluation for adults and for children. Both adults and children must be deemed as competent in order to testify in court. With regards to children, competency refers to a child's capacity and relative intelligence, their ability to distinguish between truth and lie, and their duty to tell the truth. In order to determine a child's competency, four factors may be considered: The child's ability to distinguish between true and lies along with the duty to speak the truth, the child's ability to perceive the occurrence accurately during that time,The child's ability to independently recollect the occurrence and the child's ability to verbally translate their memory of the occurrence and to answer

simple questions about the event. These guidelines were determined by the **Wheeler v. United States (1985)** Supreme Court case in which a 5-year-old boy was the only witness to a murder. The boy's testimony was ruled as admissible on the grounds that he was "sufficiently intelligent", could "distinguish between truth and lies", and understand that he was "morally obligated to tell the truth". Although federal guidelines exist for determining a child's competency, the capacities required for a child to be deemed competent also vary from state to state. For example, some states may require a child to be able to differentiate between truth and lie as well as recall past incidents, whereas other states may only require that the child is able to tell the truth.

Along with competency, a child's reliability and credibility must be tested as well. However, the guidelines for a determining a child's reliability and credibility are not as stringent as determining the child's competency. Although it is important to establish a child's relative reliability and credibility for their testimony, a judge cannot bar a witness from testifying on the grounds that he or she is competent but not credible. Although measures exist to try and prevent poor reliability, credibility, and accuracy of children's reports, research of the child testimony process indicates that there are several difficulties that may be associated with the child testimony process, especially with regards to eyewitness testimony. Topics such as language development, memory skills, susceptibility to suggestion, the truth-lie competency, and credibility and deception detection are currently being researched to determine their impact on a child's competency, reliability, and credibility.

Language development

Individual differences in language development and comprehension may cause difficulties in determining a child's relative competence with the child testimony process and the trial. Although attorneys are required to use language that is developmentally appropriate with young child witnesses, children may still have difficulty understanding the difficult terminology associated with the courtroom. Even if a child's report is accurate, adults can also make inaccurate inferences based on their report. However, some research suggests that the reliability of children's communicative competence can be minimized by better and clearer instructions as well as by more thorough preparation before the trial.

Memory skills

The inconsistency of children's memory potentially creates a problem with the reliability of children's reports. A study done by Klemfuss and Ceci (2012) indicates that "general memory skill is inconsistently associated with children's accuracy". Children younger than the age of 6 also tend to remember a higher proportion of details inaccurately in their reports when compared to children of ages 8 and 10. Along with the problem of poor memory development at a young age, there is a problem with remembering information accurately after a certain period of time. According to Beuscher and Roberts (2005), individuals tend to remember a higher ratio of accurate to inaccurate information over time.[10]

Susceptibility to suggestion

Suggestibility is defined by Ceci and Bruck (1995) as "the degree to which the encoding, storage, retrieval, and reporting of events can be influenced by internal and external factors". Although children's autobiographical recall can be highly accurate in many situations, increased exposure to suggestion can potentially increase the inaccuracy of a child's report. While previous research focused on the impact of a single piece of misinformation on the accuracy of children's reports, current research is now focusing on how multiple suggestive techniques affect the accuracy of children's reports'& Friedman (2000) suggest that a combination of implicit and explicit suggestive techniques such as bribes, threats, and repetitions of questions can have a large impact on young children's reports. These techniques are especially prevalent when interviewer bias is present during an interview with a child. Interviewer bias refers to when an interviewers' own prejudices or opinions about the event influence the manner in which they conduct the interview, and can occur when interviewers mold the interview to maximize disclosures that are consistent with their beliefs by gathering confirmatory evidence and neglecting disconfirmatory evidence.[128]

Several other factors may contribute to a child's susceptibility to suggestion such as internal or external factors. For example, the child's memory report could have been permanently altered which would be an internal factor, or the child could simply be trying to please the report interviewer or another adult which would be an external factor. Another factor that contributes to increased

[128]The Mind of the Criminal, Reid Griffith Fontaine

susceptibility to suggestion is seen through the use of peer pressure. Ceci and Bruck (2002) stated that children who were exposed to higher amounts of peer pressure were more prone to change their perception of the event in question even if their initial report was accurate.[129] Although it is difficult to predict whether or not a child will be more susceptible to suggestion, age and language skills are currently the most reliable predictors of children's resistance to suggestion.

Truth-lie competency

Another difficulty encountered with a child's credibility and reliability in the courtroom setting is truth-lie competency. Truth-lie competency refers to a child's relative accurate conception of the truth, and how a child perceives the truth when compared to an adult's perceptions. In order to determine whether a child is providing truthful testimony, the judge must determine whether the child has an accurate conception of the truth from an adult perspective before the child's testimony. There are three traditional methods of assessing a child's ability to differentiate between truth and lies such as asking the child to (1) define two concepts, (2) explain the difference between truth and lies and (3) identify examples of truth and lies statements.

Although limited, research suggests that young children may have differing definitions of lies than older children and adults. Developmentally inappropriate methods of gauging a child's

[129] Ibid 89

truth-lie competency could also hinder a child's ability to distinguish between truth and lie. Two specific factors that may also influence a child's definition of a lie include the intention of the speaker and the virulence of what is said. Furthermore, a child's perception of the truth can be influenced by personal gain or reward or by the child's desire to please significant others such as parents, lawyers, or therapists.[130]

Credibility and deception detection

Although the legal system takes care to ensure that children are sufficiently competent before testifying, it is still difficult to determine a child's credibility. Because of the relative difficulty in determining a child's reliability and credibility, few techniques exist to determine a child's ability to recount narratives accurately. One potential method of determining the reliability of a child's report is by the number of "fantastical" or highly implausible or imaginary details within the narrative. According to Bruck, Ceci, & Hembrooke (2002), a higher number of fantastical details are correlated with false narratives. Furthermore, children who describe false narratives tend to creatively utilize incorrect information to construct a false narrative. Research also suggests that the accuracy and credibility of children's reports are closely related when reports are influenced by suggestion.

[130]The Mind of the Criminal, Reid Griffith Fontaine

A study done by Nysse-Carris et al. (2011) had adults rate videos of children's truthfulness and deceitfulness. The study's results indicated that the adults' accuracy was low (only slightly above chance) when rating the children. Furthermore, the study concluded that adults tend to be more biased in labeling children as liars. In general, adultseven adults who are experts in the field—cannot reliably predict the accuracy of a child's report or a child's competence.[131]

False Memories

There's a possibility that children can create false memories. Children who attended McMartin preschool outside of Los Angeles in the 1980s accused their caregivers of sexual abuse. The children's stories turned out to be false. However, Ceci said that the children in this example, as well as others, were not lying. "Their recollections have been affected by the constant, provocative interviews they were subjected to," he stated, adding that the kids were repeatedly given leading questions. [132]

[131]Dark psychology, Robert Dale
[132]Essential Lawyering skills, Stefan H. Krieger

Bibiliography

Cascio, W. F., &Aguinis, H. (2005). Applied Psychology in Human Resource Management (6th Edition)

Chmiel, N. (2000). Introduction to Work and Organizational Psychology: A European Perspective. Blackwell Publishing: USA

Robins.P.S.(1989). Organizational Behavior, Concepts, Controversies and Applications (4th Ed) New Jersey prentice Hall

Schultz and Schultz.S.E(1990), Psychology and Work Today: An Introduction to Industrial and Organization Psychology (5th ed) New York Macmillan

APA. (2019). Law & Psychology. Retrieved from https://www.apa.org/topics/law/

Finkelman. (1999). History of Interactions between Psychology and the Law. Retrieved from http://criminal-justice.iresearchnet.com/forensic-psychology/psychology-and-law/history-of-interactions/

Heilbrun, K., & Greene, E. (2013) Psychology and Law. Psychology. doi:10.1093/obo/9780199828340-0100

Sales, B. D., & Krauss, D. A. (2015). The psychology of law: Human behavior, legal institutions, and law. doi:10.1037/14593-000

Weiner, I. B., Schinka, J. A., &Velicer, W. F. (2003). Handbook of Psychology, Research Methods in Psychology. Hoboken, NJ: John Wiley & Sons.

The Mind of the Criminal, Reid Griffith Fontaine

Psychological Profiling and Criminal Investigations, Laurence Alison

Psychology and Law, Amina Memon

Reading people, Jo-Ellan Dimitrius

Turning points at trial, Shane Read

Dark psychology, Robert Dale

Essential Lawyering skills, Stefan H. Krieger

The tools of Argument, Joel P. Trachtman

A Frieberg, "'Out of Mind, Out of Sight': The Disposition of Mentally Disordered Persons Involved in Criminal Proceedings

City Law School (2007). Advocacy 2007/2008 (Blackstone Bar Manual), Oxford: Oxford University Press.

Du Cann, Richard (1993). The Art of the Advocate, London: Penguin.

Evans, K. (1993). The Golden Rules of Advocacy, London: Blackstone Press.

Morley, I (2005). The Devil's Advocate, London: Sweet & Maxwell.

Ross, D. (2005). Advocacy, London: Cambridge University Press.

Wellman, F. [1903] (2007). The Art of Cross-Examination, Standard Publications.

Mahoney, K. (2008). Relentless Criminal Cross-Examination, James Publishing Company.

Cases

R v Mooney, unreported, Supreme Court of Victoria, Full Court, 21 June 1978 cited in R v Anderson (supra) at 160; see also Engert (1995) 84 A Crim R 67 at 71 per Gleeson CJ.

R G Fox, "Sentencing the mentally disordered offender", (1986) 60 Law Institute Journal 416 at 417; I Potas, Just Deserts for the Mad (Australian Institute of Criminology, 1982) Ch 2.

R v Chambers [2005] VSCA 34; (2005) 152 A Crim R 164 at 171 [26].

R v Vodopic [2003] VSCA 172 at [28]

R v Pyke [2006] VSCA 265 at [16] per Redlich JA (with whom Vincent and Eames

Thompson v The Queen [2005] WASCA 223; (2005) 157 A Crim R 385 at 396

Thompson v The Queen (supra) at 396 [53]

Benitez v The Queen (supra) at 174 [36]-[37].

R v Hamid (supra); R v Cunliffe (supra);

R v Ibrahim (supra)

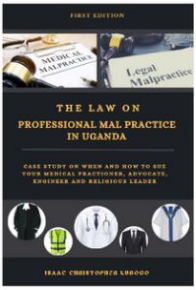
R v Walsh [2006] VSCA 87 at [24];

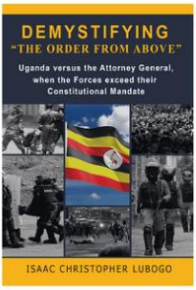
Ayoubi v R [2006] NSWCCA 364 at [27].

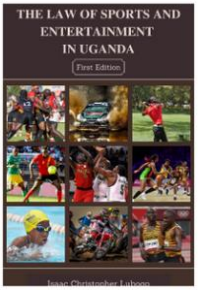
R v Walsh (supra) at [22]; Payne [2002] WASCA 186; (2002) 131 A Crim R 432at 442 [36], [40] per Steytler P;

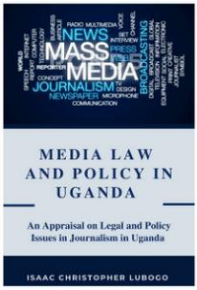
Thompson v The Queen (supra) at 396 [53] per Steytler P.

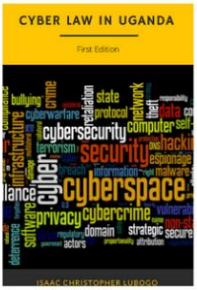
R v Van Boxtel [2005] VSCA 175; Armstrong, M. (2000). A Handbook of Personnel Management. (10thEd). Kogan Page: London UK

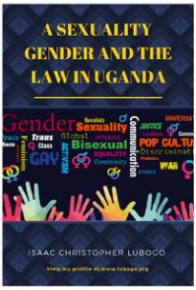


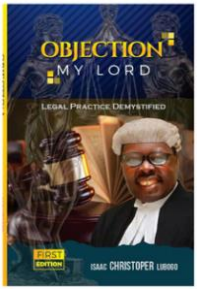


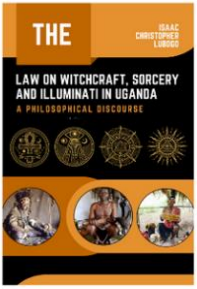




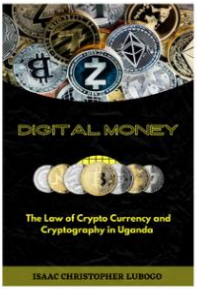


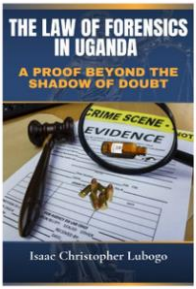


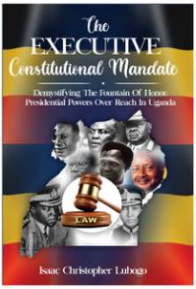


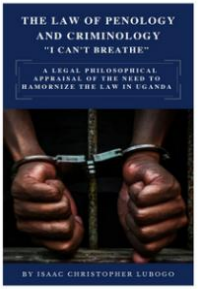


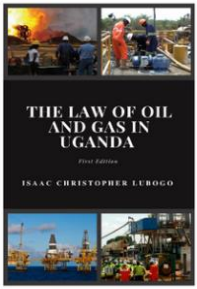


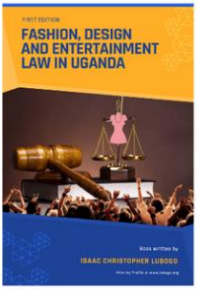


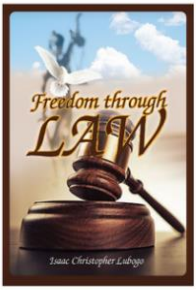


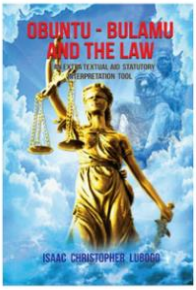


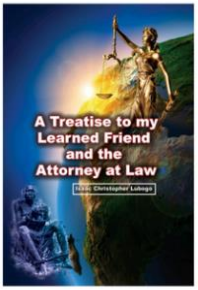


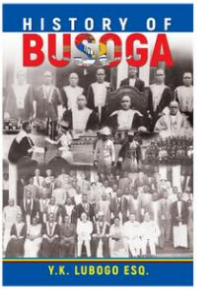


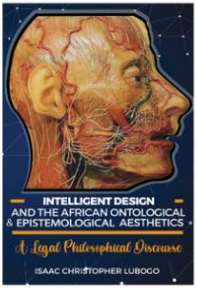


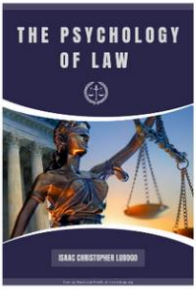
















Find all my works, bio and books at www.lubogo.org



ISAAC CHRISTOPHER LUBOGO

ABOUT THE BOOK

To master the law you must first master the art of the Psychology of the law. Law is in its fullest sense a game of psychology, a good lawyer must be able to discern ahead of his case, must think ahead, above and in jest, law is a collection of an equilibrium of unfathomable knowledge which at beast is a game of psychology. You can never beat your opponent in court or clearly off set a witness in cross-examination without grasping the Psychology of law.

Law and psychology are two separate disciplines but have so much in common. While psychology's goal is to understand behavior and law's goal is to regulate it, both fields make assumptions about what causes people to act the way they do.

The book provides an introduction to the study of psychology as it relates to the law. The history of psychology's relationship to the law, the theories and models of justice and their relationship to psychology. We look at the different branches of psychology, the relevance of psychology in law, the role of psychologists in the legal system, the criticism of psychology, the future directions in psychology and law in Uganda.

It will lead to a better understanding of criminal and civil issues that involve psychological perspectives including a focus on psychological experts in court, the concept of cross examination that is examination in chief, cross examination and re-examination there in, the ideology of working around the case in terms of demeanor, establishing relevance of facts and getting information from a witness, child custody, law enforcement, victimology, violent offenders, risk assessments and treatment of forensic clinical populations.

The book focus on the application of psychological theory, methods and data to various procedures and issues in the legal system including deception, eye witness identifications ,alibi generation and corroboration, repressed and recovered memories and assessors selection and decision making and also the methodological issues associated with conducting research in psychology and law.

ISBN 978-9913-633-18-5