



What's New in Forensic Psychology

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Introduction

Forensic psychology has evolved as the specialty has matured. Just a few decades ago, few psychologists were performing forensic evaluations or testifying in court. Forensic work was the province entirely of psychiatrists. However, during the past few decades, psychologists have been increasingly performing evaluations in legal cases and testifying in court. The forensic practice areas requiring a medical opinion (as opposed to a psychological opinion) by statute are far fewer than in prior decades (now mostly limited to civil commitment cases). This article will review the three broad areas of forensic practice—civil, criminal, and family—and indicate what recent developments exist in each.

Civil law cases

Civil cases, frequently referred to generically as personal injury cases, involve two elements: liability and damages. Liability is whether a defendant did wrong, simply put. Psychologists rarely serve as liability experts, other than in malpractice cases involving psychologists, in which it may be appropriate to give an opinion about whether a psychologist followed an acceptable standard of care. Psychologists are almost always retained as damages experts, assessing the psychological effect on the plaintiff of an alleged wrongful act (or tort, as the wrongful act is called).

One development in civil cases is the increased role of neuropsychologists in head injury cases. In the past, any claims regarding brain injury would need to be documented by a medical professional, preferably with clear radiographic findings. Although physicians are still involved in head injury cases, increasingly, as the field of neuropsychology has become more sophisticated and well established, neuropsychologists are retained (and accepted in court) to determine if a pattern of psychological test scores is consistent with brain injury.

A parallel change has occurred with regard to evaluating civil competencies, such as competence to execute a will, manage one's affairs, or enter into a contract. Psychologists are increasingly used, in part because of psychologists' historical involvement with and knowledge of assessment of intellectual and adaptive functioning, areas critical for such evaluations.

Another change in recent decades has been the increase in what one could call social tort cases. That is, in the past, the typical personal injury case would involve a physical injury to the plaintiff in what is referred to as a slip-and-fall case. Such cases would frequently involve some physical injury to the plaintiff, in addition to psychological damage. However, over recent decades, psychologists have increasingly evaluated plaintiffs in cases involving social trauma, not solely physical trauma. These cases can involve, for example, harassment and discrimination cases. Some sexual abuse cases also can be considered social tort cases,

if there were no physical injuries to the victim.

Such social tort cases present evaluation difficulties. When a plaintiff is injured in an auto accident, a physical tort case, there may be disputes over whose fault the accident was or whether the plaintiff really has suffered psychological damages to the extent he or she claims. However, there is not typically a dispute over whether the accident itself occurred. However, in social tort cases, there is frequently a dispute over whether the social trauma (or alleged tort) occurred at all. For example, a defendant may claim that he or she did not harass or discriminate against the plaintiff, and the plaintiff may claim that the defendant did do so. This ambiguity in social tort cases make it easy for psychologists to be drawn into unscientific syndrome findings—that is, concluding that a plaintiff's pattern of symptoms establishes that he or she was indeed the victim of a particular social tort. Such conclusions are really findings of fact and best left to the finder of fact—the judge or jury.

One cornerstone of civil evaluations is an assessment of malingering. Invariably, the plaintiff reports having psychological symptoms, and equally invariably, the defense suspects that these symptoms are either completely manufactured or, at the least, exaggerated. One change in the past decade is that there is now an increased level of instrumentation to determine the probability of malingering. There are now instruments developed specifically to evaluate the likelihood either of malingering psychological symptoms (such as the Structured Interview of Reported Symptoms [SIRS], Rogers, Bagby, & Dickens, 1992) or of malingered cognitive impairment (such as the Validity Index Profile [VIP], Frederick, 1997).

Criminal law cases

Similar to civil cases, in recent years, traditional criminal cases, such as insanity or diminished capacity, in which one would previously only see psychiatrists testify now regularly involve psychologists. In addition, a number of specialized areas of practice have developed within the broad area of criminal cases. In particular, forensic psychologists now routinely conduct risk assessments. These risk assessments occur in a few common contexts: sex offense cases, juvenile waiver cases (in which a juvenile commits a serious crime, and the prosecution moves to transfer the juvenile to adult court), and psychiatric civil commitment cases, among others.

Sex offense cases are perhaps the most rapidly growing area of criminal case practice. Sex offender evaluations occur at virtually all points in the criminal justice process, from initial pre-adjudication evaluations to civil commitment evaluations. Moreover, with the advent of New Jersey's sex offender community notification law, many psychologists are performing evaluations in challenges to risk level assignments, which are directly tied to level of community notification.

Sex offense cases also illustrate one other significant change in forensic practice: the development of structured forensic tools specific to the psychological question. In sex offense cases, the question is typically one of risk. Consequently, there has been a variety of risk assessment tools developed, and the expert in this area must learn an alphabet soup of acronyms for these instruments, such as the RRAS (Witt, DeRusso, Oppenheim, & Ferguson, 1997), Static-99 (Hanson & Thornton, 1999), and SVR-20

(Boer, Hart, Kropp, & Webster, 1997). Gone are the days in which an expert can come into court and in response to a cross examination question such as, "Doctor, on what basis do you conclude that this man presents high risk to the community?" reply with "It's my clinical opinion," an omniscient, conclusory style to which I aspire as a neophyte forensic psychologist. Nowadays, the expert would need to present evidence from an empirically guided or validated instrument that measures likelihood of reoffense.

Along similar lines, psychologists are routinely retained by both prosecution and defense in juvenile waiver cases, in which the prosecution moves to have the juvenile court waive jurisdiction and transfer the juvenile to adult court. One criterion that psychologists need to address, as defined by the statute, is whether the juvenile can be rehabilitated with the resources available to the court by his or her 19th birthday. Again, long gone are the days when a psychologist could say yes or no based solely on an unstructured clinical opinion (see, for example, Witt, 2003). Most reports viewed by the courts as credible involve a more structured form of risk and rehabilitation potential, typically involving an instrument such as the SAVRY (Borum, Bartel, & Forth, 2002), which considers both risk and protective factors known to be empirically related to juveniles' future violent behavior.

In addressing whether civilly committed psychotic individuals are safe to be released to the community, there has been a similar movement towards structured risk assessment scales. In this instance, perhaps the most widely used scale is the HCR-20 (Webster, Douglas, Eaves, & Hart, 1997), which considers histori-

cal, clinical, and risk management factors.

The use of such instruments serves two purposes. First, their use encourages the forensic evaluator to systematically review those factors known to have an empirically supported relationship with future violence. Second, it provides an organizational tool around which the evaluator can communicate the findings, making the evaluation results more understandable and transparent to the reader of the report.

Family law cases

One shift in family law cases has been one of vocabulary. Evaluators are moving away from use of "child custody" and using more descriptive, less potentially inflammatory terms, such as "parenting time." Evaluations, as a corollary, are becoming less focused on which parent will win custody and more focused on what specific parenting arrangement will be in the best interests of the child(ren). In many reports, one will not even see the term "custody" used, but instead the evaluator will make a variety of quite specific recommendations regarding parenting arrangements or support and therapeutic services that will best assist the family.

A second major shift in family law cases has been the rise of non-traditional roles for psychologists, such as divorce mediator and parenting coordinator. To a certain extent, both roles use psychologists' traditional skills regarding intervening in high conflict families, but the goals, context, and methods of intervention are different in these new roles. In mediation, the goal is to assist the divorcing couple to reach an agreement regarding aspects of the divorce (such as parenting arrangements for the children), and this agreement may be legally binding on the couple. Parenting coordinators are typically appointed or jointly agreed to by the parents in high conflict situations. The parenting coordinator's role is to help the parents manage whatever disagreements they have so that their children's interests will be best served. The parenting coordinator may also serve as a central repository for information from outside evaluators, each of whom considers a specific aspect of the family situation. The parenting coordinator may then make recommendations, in some cases binding, about what arrangements best serve the children's interests.

Summary

In conclusion, one can see certain themes emerge from the above discussion of recent developments in the practice of forensic psychology. These are:

- Increased use of forensic psychologists in cases in which previously only medical doctors testified;
- Increased sophistication in forensic instruments, with a range of instruments constructed to assess malingering, risk, or various civil and criminal competencies;
- New, untraditional roles in some areas of practice, such as mediator or parenting coordinator. ❖

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