

Unit 01: Introduction to Forensic Psychology

Unit 01 Instructor Notes -

Defining Forensic Psychology

- The field of forensic psychology, also sometimes referred to as the psychology of law, can be challenging to define given the wide range of activities and areas in which forensic psychologists may interact with the legal system. Forensic psychologists can work within and beyond the legal system, and engage in matters relevant to both the civil and criminal sides of the justice system. Psychologists may also work in a variety of capacities, and may have training in areas that include both clinical and/or experimental psychology. The course text provides a parsimonious and straightforward definition of forensic psychology, namely: “A field of psychology that deals with all aspects of human behaviour as it relates to the law or legal system” (Pozullo et al., 2018). Take a moment to hear from a few experts who work in the field for their take on the kinds of activities and roles forensic psychologists may participate in.

Roles Played by Forensic Psychologists

- Psychology can interface with the law and has relevance across a wide variety of legal matters. Further, a variety of disciplinary backgrounds within psychology can be applied to the psychology of law. For instance, a developmental psychologist may bring their expertise in child development in helping to answer questions regarding whether a child who commits murder fully appreciates the nature and consequences of his or her crime? A cognitive psychologist might apply their expertise in conducting research to answer questions about the conditions under which eyewitnesses are able to remember details of crimes.
- As outlined in your course text, forensic psychologists may also work in a variety of roles with diverse background and training experiences. In the role of clinician a forensic psychologist is likely to be broadly concerned with clinical and

mental health related matters relevant to the legal systems. They may engage in a wide variety of activities that may include:

- Undertaking assessments for the court in relation to whether a defendant's mental illness renders them unfit to stand trial, or, not responsible for their crime
 - Providing treatment for those involved in the criminal justice system in settings such as prisons or forensic psychiatric hospitals
 - They may provide expert testimony on questions of a psychological nature
 - In civil settings they may undertake assessments of parenting capacity
- In Canada, a clinical forensic psychologist must be licensed to practice in the province or territory where they work and have specialized training in the forensic area. The requirements for licensure vary, though in most Canadian jurisdictions doctoral level training is necessary (a few jurisdictions allow for licensure at the Master's level).
- Forensic psychologists also frequently work as researchers, or experimental forensic psychologists, and may focus their research activities on a range of issues relating to the law and legal system broadly. It is helpful to note that a clinical psychologist may also engage in research related to psychology and law. Example of research topics and questions that a researcher may focus on in the field of psychology and law include:
- Evaluating the risk and protective factors linked with recidivism and positive outcomes for justice-involved youth
 - Identifying factors that increase risk of vulnerable suspects making a false confession or making an invalid waiver of their legal rights
 - Determine factors that influence the reliability of eyewitness memory and identification

- Studying the validity of psychological instruments used in forensic contexts, such as those designed to aid in the process of police selection, or to assess violence risk
- A third role that a forensic psychologist may occupy is the role of legal scholar, or, those who engage in activities related to the study of mental health law, legal policy analysis, and consultation in the context of legislative development and reform (Brigham, 1999). While this role tends to be less commonly taken up by forensic psychologists, your text outlines unique training programs in Canada that prepare learners for practice in this area, frequently by training in joint programs offering a PhD in psychology and an LLB in law.
- Another helpful model for understanding the ways in which forensic psychologists may interact with the legal system was proposed by Craig Haney (1980). Haney's model suggests that there are three primary ways in which psychology and law relate to one another:

Psychologists as Experts: Expert Witnesses in Legal Proceedings

- From the early beginnings of the field, forensic psychologists have been asked to provide expert testimony in court. After all, judges, lawyers, and jurors, cannot be expected to know everything! Expert witnesses, or, those who have specialized knowledge attained through a combination of education and experience, may be called upon to testify in courts. According to Cutler and Kovera (2011) expert witnesses "...provide assistance to the triers of fact – either a judge or a jury – in the form of an opinion based on some type of specialized knowledge, education, or training" (p. 53). Expert witnesses are a unique class of witnesses in legal proceedings, because unlike other witnesses who can only testify about what they have directly observed, witnesses qualified as experts can provide the court with their opinion on matters relevant to the case. Importantly an expert is meant to serve as an educator to the court, maintaining

an objective stand, rather than serving as an advocate for the defense or the prosecution.

- Given their specialized role, forensic psychologists must meet certain criteria for their testimony to be accepted as admissible in court when they are serving as expert witnesses. Your text reviews several important series of criteria outlining the admissibility of expert testimony in the United States, including the general acceptance test, and the Daubert criteria. In Canada, the rules for admissibility of expert testimony were outlined in an important legal case, R. v. Mohan (1994), wherein the Supreme Court of Canada ultimately outlined four criteria for admissibility:
 - **Relevance:** Is evidence logically related to a fact it issues at trial?
 - **Necessity:** Will the expert provide information likely to be outside ordinary experience and knowledge of the triers of fact?
 - **Absence of exclusionary rule:** Will potential probative value of the evidence be outweighed by its prejudicial impact?
 - **Qualifications of the expert:** Expertise is generally demonstrated by establishing a certain level of training and relevant experience.
- Your text also outlines more recently added criteria since Mohan that judges should consider when ruling on the admissibility of expert testimony, such as the need for experts to be independently and impartial (White Burgess Langille Inman v. Abbott and Haliburton Co., 2015). In practical terms, decisions regarding the admissibility of expert evidence is not always a straightforward matter.

Textbook Notes Chapter 1: Introduction

Biological, Sociological, and Psychological Theories of Crime

Biological Theories of Crime

- Sheldon's (1949) **constitutional theory**. Sheldon proposed that crime is largely a product of an individual's body build, or

somatotype, which is assumed to be linked to an individual's temperament. According to Sheldon, endomorphs (obese) are jolly, ectomorphs (thin) are introverted, and mesomorphs (muscular) are bold. Sheldon's studies indicated that, because of their aggressive nature, mesomorphs were most likely to become involved with crime.

- Jacobs, Brunton, Melville, Brittain, and McClellmont's (1965) **chromosomal theory**. Jacobs and her colleagues proposed that chromosomal irregularity is linked to criminal behaviour. A normal female has two X chromosomes, whereas a normal male has one X and one Y chromosome. However, it was discovered that there were men with two Y chromosomes, which, it was proposed, made them more masculine

and, therefore, more aggressive. According to Jacobs et al., this enhanced aggressiveness would result in an increased chance that these men would commit violent crimes.

- Nevin's (2000) **theory of lead exposure**. Nevin was one of the first researchers to propose a link between childhood lead exposure (e.g., from paint and gasoline) and criminal behaviour. Although it was unclear why lead exposure and crime were related in his early research, more recent studies using neuroimaging technology suggest that lead exposure may impact brain development, including regions that are responsible for emotional regulation and impulsive control. Such deficits may increase the probability that one exhibits anti-social behaviour.

Sociological Theories of Crime

- Merton's (1938) **strain theory**. Merton proposed that crime is largely a product of the strain felt by certain individuals in society, typically the lower class, who have restricted access to legitimate means (e.g., education) of achieving valued goals of success (e.g., status). Merton

- argued that while some of these individuals will be happy with lesser goals that are achievable, others will turn to illegitimate means (e.g., crime) in an attempt to achieve these valued goals.
- Sutherland's (1939) **differential association theory**. Sutherland proposed that criminal behaviour is learned through social interactions in which people are exposed to values that can be either favourable or unfavourable to violations of the law. More specifically, Sutherland maintained that people are likely to become involved in criminal activity when they learn more values (i.e., attitudes) that are favourable to violations of the law than values that are unfavourable to it.
- Becker's (1963) **labelling theory**. Becker proposed that deviance (e.g., antisocial behaviour) is not inherent to an act but a label attached to an act by society. Thus, a "criminal" results primarily from a process of society labelling an individual as a criminal. This labelling process is thought to promote the individual's deviant behaviour through a self-fulfilling prophecy.

Psychological Theories of Crime

- Eysenck's (1964) **biosocial theory of crime**. Eysenck believed that some individuals (e.g., extraverts and neurotics) are born with nervous systems that influence their ability to learn from the consequences of their behaviour, especially the negative consequences experienced in childhood as part of the socialization and conscience-building process. Because of their poor "conditionability," it is assumed that individuals who exhibit high levels of extraversion and neuroticism will develop strong antisocial inclinations.
- Akers's (1973) **social learning theory**. Akers suggested that crime is learned in the same way that noncriminal behaviour is learned. According to Akers, the likelihood of becoming a criminal increases when one interacts with individuals who favour antisocial attitudes; when one is exposed to role models, either in person or symbolically, who disproportionately exhibit antisocial behaviour; when one defines antisocial behaviour as

justified in a particular situation; and when one has received (and expects to receive) a greater degree of rewards versus punishments for antisocial behaviour.

- Gottfredson and Hirschi's (1990) **general theory of crime**. Gottfredson and Hirschi argued that low self-control, internalized early in life, in the presence of criminal opportunities explains an individual's propensity to commit crimes.

The Roles of a Forensic Psychologist

- Clinical forensic psychologists: Psychologists who are broadly concerned with the assessment and treatment of mental health issues as they pertain to the law or legal system
 - o Conducting divorce and child custody mediation
 - o Providing expert testimony on questions of a psychological nature
 - o Carrying out personnel selection (e.g., for law enforcement agencies)
 - o Running critical incident stress debriefings with police officers
 - o Facilitating treatment programs for offenders
- Forensic psychiatry: A field of medicine that deals with all aspects of human behaviour as it relates to the law or legal system
- Experimental forensic psychologists: Psychologists who are broadly concerned with the study of human behaviour as it relates to the law or legal system
 - o Examining the effectiveness of risk-assessment strategies
 - o Determining what factors influence jury decision making
 - o Developing and testing better ways to conduct eyewitness lineups
 - o Evaluating offender and victim treatment programs
 - o Studying the effect of stress management interventions on police officers

- The Forensic Psychologist as Legal Scholar: A third role for the forensic psychologist, which is far less common than the previous two, is that of legal scholar.

Other Forensic Disciplines:

- Forensic anthropology: Forensic anthropologists examine the remains of deceased individuals to help determine their identity and how they might have died.
- Forensic biology: Forensic biologists apply their knowledge of the life sciences (e.g., entomology, genetics, botany, etc.) to legal investigations. For example, forensic entomologists are concerned with how insects can assist with criminal investigations. They can help determine when someone died based on an analysis of insect presence/development on a decomposing body.
- Forensic odontology: Forensic odontologists study the dental aspects of criminal activity. For example, they might assist the police in identifying deceased individuals through an examination of dental records, or they might help determine who left bite marks on an individual.
- Forensic pathology: Sometimes referred to as coroners, forensic pathologists are medical doctors who examine injuries or the remains of dead bodies in an attempt to determine the time and cause of death through physical autopsy.
- Forensic toxicology: Forensic toxicologists study the effects of drugs and other chemicals on people within the context of the law. For example, they might be consulted to determine if drugs played a part in a person's death.

The Relationship Between Psychology and Law

- Psychology and the law: The use of psychology to examine the operation of the legal system
- Psychology in the law: The use of psychology in the legal system as that system operates

- Psychology of the law: The use of psychology to examine the law itself

Influential Court Cases in the Field of Forensic Psychology

- R. v. Hubbert (1975). The Ontario Court of Appeal states that jurors are presumed to be impartial (i.e., unbiased) and that numerous safeguards are in place within the Canadian judicial system to ensure this (e.g., limitations can be imposed on the press regarding what they can report before the start of a trial).
- R. v. Sophonow (1986). The Manitoba Court of Appeal overturns the murder conviction of Thomas Sophonow because of errors in law, many of which related to problems with the eyewitness evidence collected by the police as part of their investigation.
- R. v. Lavallee (1990). The Supreme Court of Canada (SCC) sets guidelines for when and how expert testimony should be used in cases involving battered woman syndrome. Since this ruling, expert testimony in cases of battered women who kill has increased.
- Wenden v. Trikha (1991). The Alberta Court of Queen's Bench rules that mental health professionals have a duty to warn a third party if they have reasonable grounds to believe that their client intends to seriously harm that individual.
- R. v. Swain (1991). The SCC makes a ruling that results in changes to the insanity defence standard in Canada, including the name of the defence, when the defence can be raised, and for how long insanity acquittees can be detained.
- R. v. Levogiannis (1993). The SCC rules that children are allowed to testify in court behind screens that prevent them from seeing the accused.
- R. v. Mohan (1994). The SCC establishes formal criteria for determining when expert testimony should be admitted into court.

- R. v. Williams (1998). The SCC formally acknowledges that jurors can be biased by numerous sources, ranging from community sentiment on a particular issue to direct involvement with a case (e.g., being related to the accused).
- R. v. Gladue (1999). The SCC rules that prison sentences are being relied on too often by judges as a way of dealing with criminal behaviour, especially for Aboriginal offenders, and that other sentencing options should be considered.
- R. v. Oickle (2000). The SCC rules that police interrogation techniques, which consist of various forms of psychological coercion, are acceptable and that confessions extracted through their use can be admissible in court.
- R. v. L.T.H. (2008). The SCC makes a ruling that, when determining the admissibility of a statement made by a young person to the police, the prosecution does not have to prove that the young person understood his or her legal rights as explained by police, but they do have to prove that these rights were explained to the young person using language appropriate to his or her age and understanding.

Modern-Day Debates: Psychological Experts in Court

- **Expert witness:** A witness who provides the court with information (often an opinion on a particular matter) that assists the court in understanding an issue of relevance to a case

The Challenges of Providing Expert Testimony

- Providing effective testimony is also challenging because of the inherent differences (often conflicts) that exist between the fields of psychology and law
 1. **Epistemology.** Psychologists assume that it is possible to uncover hidden objective truths if the appropriate experiments are conducted. Truth in the law is defined subjectively and is based on who can provide the most convincing story of what really happened that is consistent with the law.

2. **Nature of law.** The goal in psychology is to describe how and why people behave the way they do (i.e., psychology is descriptive). Law, however, is prescriptive. It tells people how they should behave and provides the means to punish people for not behaving in the prescribed way.
3. **Knowledge.** Knowledge in psychology is based on the empirical, nomothetic (group-based) data collected using various research methodologies. In the law, knowledge comes from the idiographic analysis of court cases and the rational application of logic to establish the facts of a case and connections to other cases that have set legal precedent.
4. **Methodology.** Methodological approaches in psychology are predominantly nomothetic and experimental with an emphasis on controlling for confounding variables and replicating results. In contrast, the law operates on a case-by-case basis, with a focus on constructing compelling narratives that adequately cover the details of a specific case while being consistent with the law.
5. **Criterion.** Psychologists are relatively cautious in terms of their willingness to accept something as true. To accept a hypothesis, for example, conservative statistical criteria are used (e.g., the use of $p < .05$ in significance testing). A more expedient approach is adopted in the law, whereby guilt is determined using various criteria established for a particular case (e.g., beyond a reasonable doubt).
6. **Principles.** Psychologists take an exploratory approach that encourages the consideration of multiple explanations for research findings. Ideally, the correct explanation is identified through experimentation. Lawyers adopt a much more conservative approach. An explanation surrounding a case predominates based on its coherence with the facts and with precedent-setting cases.
7. **Latitude of courtroom behaviour.** The behaviour of the psychologist when acting as an expert witness is severely

limited by the court. For example, testimony provided by a psychologist is restricted by rules of evidence. The law imposes fewer restrictions on the behaviour of lawyers (though they are also restricted in numerous ways). For example, so long as they act within the rules, lawyers can present a wide range of evidence, call on various types of witnesses, and present their case in the way they see fit.

Criteria for Accepting Expert Testimony

- **General acceptance test:** A standard for accepting expert testimony, which states that expert testimony will be admissible in court if the basis of the testimony is generally accepted within the relevant scientific community
 - **Daubert criteria:** An American standard for accepting expert testimony, which states that scientific evidence is valid if the research on which it is based has been peer reviewed, is testable, has a recognized rate of error, and adheres to professional standards
 - **Mohan criteria:** A Canadian standard for accepting expert testimony, which states that expert testimony will be admissible in court if the testimony is relevant, is necessary for assisting the trier of fact, does not violate any exclusionary rules, and is provided by a qualified expert
 - o Since the Mohan ruling, additional criteria have been added to the list of issues that judges can or should consider when ruling on the admissibility of expert testimony.
1. The evidence must be relevant, in that it makes a fact at issue in the case more or less likely. Returning to our criminal profiling example, consider a serial rape case involving a white defendant and black victims. If an expert in the area of profiling concludes, as a result of reliable research, that 95% of all rapes are intraracial, it is possible that this testimony may be deemed relevant by the court since

it makes it less likely that the defendant is guilty (Ormerod, 1999).

2. The evidence must be necessary for assisting the trier of fact. In other words, the testimony must be about something that goes beyond the common understanding of the court. For example, testimony from a profiler might suggest that the offender who committed a series of rapes is likely to have been unemployed or a shift worker at the time of the crimes. If that testimony were based on the fact that many of the rapes were committed during the day, it is doubtful that the testimony would be deemed admissible by the court because jurors applying their common sense will likely come to the same conclusion (Ormerod, 1999).
3. The evidence must not violate any other rules of exclusion (i.e., rules that would otherwise exclude the admissibility of the evidence). For example, even in cases where testimony was deemed relevant, it can still be ruled inadmissible if its potential prejudicial effect (on jurors) outweighs its probative value. Consider a trial where the defendant allegedly raped very young girls. In this case, it would be relevant that the defendant has previously been convicted of similar crimes in the past, and therefore testimony about this fact has probative value. However, the prejudicial effect associated with this testimony is so great that it may lead jurors to convict the defendant, not because they are convinced of his guilt, but because “he did it before so he deserves to be punished anyways” (Ormerod, 1999, p. 218).
4. The testimony must be provided by a qualified expert. Expertise in a court of law is typically determined by considering the type and amount of training and experience a witness possesses. Thus, if the testimony being considered relates to a criminal profile of the offender who committed a series of rapes, the witness must possess expertise in this specific domain for the testimony to be admissible. While

determining this issue is usually straightforward, difficulties sometimes arise in determining what type of training and/or experience is valid, especially in cases where the testimony is based not in science but on “art” (as is arguably the case with profiling; Ormerod, 1999).

Summary

- The history of forensic psychology is marked by many important milestones, in both the research laboratory and the courtroom. Early research included studies of testimony and suggestibility, and some of the early court cases in Europe where psychologists appeared as experts dealt with similar issues. Hugo Munsterberg played a significant role in establishing the field of forensic psychology in North America, and by the early 1900s, forensic psychologists were active in many different parts of the North American criminal justice system, including in Canada. Currently, forensic psychology is viewed as a distinct and specialized discipline, with its own textbooks, journals, educational programs, and professional associations.
- Forensic psychology can be defined in a narrow or broad fashion. Narrow definitions usually focus only on the clinical or experimental aspects of the field, whereas broad definitions are less restrictive and encompass both aspects.
- Forensic psychologists can play different roles. Clinical forensic psychologists are primarily interested in mental health issues as they pertain to law. Experimental forensic psychologists are interested in studying any aspect of human behaviour that relates to the law (e.g., eyewitness memory, jury decision making, risk assessment).
- Psychology can relate to the field of law in three ways. Psychology and the law refers to the use of psychology to study the operation of the legal system. Psychology in the law refers to the use of psychology within the legal system as it operates.

Psychology of the law refers to the use of psychology to study the legal system itself.

- Expert witnesses differ from regular witnesses in that expert witnesses can testify about their opinions, whereas other witnesses can testify only as to what they know to be fact. In Canada, the criteria for determining whether an expert's testimony will be admitted into court relate to whether the testimony (1) is relevant, (2) goes beyond the common understanding of the court, (3) does not violate any exclusionary rules, and (4) comes from a qualified expert.

DeMatteo, Marczyk, Krauss, & Burl (2009) Article

- Despite historical lineage dating to 1900s and the publication of Hugo Munsterberg's "on the witness stand", it was not recognized as a discrete specialization until 2001
- Indicator of the growth of forensic psychology is number and range of educational opportunities available
- First joint law degree was at Nebraska in 1973 started the shift
- despite the current availability, consensus regarding core educational components is undetermined
- Ensuring proper training takes importance because of the varied roles of forensic psychologists, and need necessary knowledge, skills and experiences

Defining the role of the modern forensic psychologist

- Long tradition of providing services to the legal system

- Initial interaction between psych and law was clinical services to incarcerated adult offenders and juvenile offenders
- Other early interactions were fitness testing of law enforcement personnel and the pretrial evaluation of criminal offenders
- *Jenkins v US* held that psychologists can testify in court as experts in psychiatric disorders and psychological measures can be introduced to support their expert opinions
- Since Jenkins, psychologists as expert witnesses has dramatically increased
- Debate around the definition of forensic psychology and appropriate roles they hold
- Basic level it can be conceptualized as application of the science and profession of psychology to questions and issues relating to law and the legal system
- Debate over what research, assessment, and treatment and roles should be considered forensic psychology
- Narrowly it could be defined as only encompassing clinical, counseling and school psychology, but this excludes practitioners without clinical degrees
 - Under this, social, experimental, cognitive psychology wouldn't be considered forensic despite their contribution in legal contexts
- Dissatisfaction of narrow conceptualizations emerged leading to broader definition of all professional practice by any psychologist working within any subdiscipline of psychology when the intended

purpose of the service is to apply the scientific, technical, or specialized knowledge of psychology to the law and use that knowledge to assist in solving legal, contractual, and administrative problems

- This includes clinical, policy, correctional, forensic mental health, and nonclinical research of psychologists
- Another definition is both (1) the _____ that examines aspects of human behavior directly related to the legal process... and (2) the _____ of psychology within or in consultation with a legal system that embraces both civil and criminal law and the numerous areas where they intersect”

Educational training opportunities in forensic psychology

- The advances in the last 30 years have brought attention to the laws demands, the development of specialized forensic assessment instruments, the founding of interdisciplinary organization, growth in research, scholarship, and practice related literature
- Because of growth are being called upon more for mental health assessments, treatment and be consultants on criminal and civil contexts
- Forensic practice is not financially constrained making it appealing
- Increased interest means need better student training programs but growth can be seen through the increase and diversity of educational training opportunities now
 - Undergraduate, joint degree graduate, and JD and PhD programs and post doctorate in forensic is becoming more

available

- Despite the growth in training, there is little consensus for appropriate training models and goals so training methods consider the varied roles of forensic psychologists

Undergraduate training in forensic psychology

- Many offer at least one course about law and psychology and they are one of the most popular course offerings
- Recent years there has been an increase in law/psychology courses that are more diverse
 - Ex: child witnesses, role of psychology in legal process and social science applications to law
- Most recent is degrees in forensic psychology

Graduate training in forensic psychology

- Still limited
- More training and educational opportunities for those in graduate programs
- Options at masters and doctoral levels and clinical and nonclinical joint degree programs for training in law and psychology
- 50 graduate programs that range from 2-7 years
- 12 masters programs - prisons, juvenile facilities, social service agencies, police departments, probation and parole, courts and

mental health centres are the various focuses

- 10 doctoral level for clinical psychology with forensic focus, and another 10 with a sole focus on forensic psychology, legal, or psychology and law
- 6 joint degree programs
- Getting PhD, or psychD, must do 1 year APA predoctoral internship and range dramatically between specialities

Postdoctoral training and continuing education in forensic psychology

- Much of the speciality training in forensic happens after the doctorate level
- Fellowship provides intensive, supervised research and practical experience and are good for people with experience but just specializing in one area
- Practitioner can enhance forensic knowledge with a continuing education seminars and give highly specific training on particular assessment instrument of intervention approach

Credentialing in forensic psychology

- After doctorate and working for several years if they want to distinguish expertise they seek board certification
- Most respected in American board of professional psychology and the only one recognized by the APA directory

- 13 certifications within clinical, neuropsychology, and forensic psychology
- Need doctoral degree in professional psychology, certification at independent practice level, minimum of 100 hours of formal education, direct supervision or continuing education, minimum 1000 hours of experience in forensic psychology

Best competencies and training models in forensic psychology

- Forensic practitioners should obtain training and experience in following areas:
 1. Substantive psychology
 2. Research design/ methodology and stats
 3. Conducting research
 4. Legal knowledge
 5. Integrative law-psychology knowledge
 6. Ethics and professional issues
 7. Clinical forensic training