

# Admin

>Syllabus review

## Grades

- Critical Questions
  - Prior to any 2 classes, read the chapter before the class and email a critical question related to that topic by 7pm prior to class.
  - Can be related to any of the readings assigned for that topic
- Midterms (2)
  - Sept 26 and Oct 31, both at 7pm
  - Non cumulative
- Media Critique
  - Pick forensic psychology topic and apply to an episode of a fictional legal television show. Write a 4-page-max paper critiquing the extent to which the media portrayal is (in)accurate
  - Nov 15 7pm to be submitted through Canvas
- Final 34%

## Schedule

- For today until next week: read chapter 1
- Next week: read chapters 4, 5, 6

# Intro to Forensic Psychology

## What is Forensic Psychology?

- Compared to the general population, police officers are not more likely to get divorced and commit suicide
  - Large portion of it is also identifying the types of individuals who will succeed in the position
- Tough-on-crime strategies (e.g. long prison sentences, mandatory sentences) are not an effective way to reduce crime
  - Results null or even negative
- Crime rates (police reported) in Canada are on the slightest rise, but still about 30% lower than the rates in the 90s
- Clinicians can, depending, accurately predict whether an offender will commit a new offence when released from prison
  - Human behaviour is impossible to predict for the most part, but have made large strides in the area
- **A field of psychology that deals with all aspects of human behaviour as it relates to the law or legal system (intersection between psychology and law)**
  - Non-clinical/experimental (researchers)

- Clinical (practitioners) - treatments

### **History of Forensic Psychology**

- 1800s-early 1900s - research being done on things like testimony, susceptibility of children, memory recall
- Late 1800s - begin to see seeds of forensic psychology
- Early 1900s - Hugo Munsterberg how psychology can help the legal system but widely criticized, John Wigmore writes satirical law article
- Continued to progress... late 1900s, guidelines for Forensic Psychologists are approved and adopted
- 2001 - APA designates forensic psychology as a specialty area

### **For forensic psychologists today**

- American Psychology-Law Society
- International Association of Forensic Mental Health
- Criminal Justice Section, Canadian Psychological Association

### **What do Forensic Psychologists do?**

- Clinicians
  - Forensic evaluations - criminal and civil
  - Provide treatments
- Researchers
  - Research on any topic related to the forensic system
  - Some more implications for forensic system, some more for legal system
- Legal scholars
  - Scholarly analyses of mental health law and psychologically oriented movements.. Policy analysis and legislative consultation

### **Haney's Taxonomy (1980)**

- Psychology and the law
  - Psychology is a separate discipline; doing research that can apply to the legal system, answering questions about assumptions made within legal systems
  - E.g. eyewitness testimony, interrogations
- Psychology in the law
  - Use of psychological knowledge in the legal system
  - Forensic psychologists might provide expert testimony on legal issues
    - Fitness to stand trial, competency
- Psychology of the law
  - Using psychology to study the law itself
    - E.g. why do people need the law?

## Local forensic psychologists!!

- Dr. Stephen Hart - Professor at the Dept. of Psych. At SFU, threat assessment specialist, clinical-forensic psychology
- Dr. Kevin Douglas, also Professor, Clinical Forensic Psychology, SFU, threat assessment specialist
- Dr. Jodi Viljoen, Associate Professor, Dept. of Psychology, Clinical and Law-Forensic areas, juvenile violence/offenders
- Dr. Tonia Nicholls, Professor, Dept. Psychiatry, UBC, mental illness/substance use, personality disorders, psychopathy, gender, risk, etc.
- Dr. Ron Roesch, Professor, Dept. Psychology, SFU, Law and psychology, competency to stand trial, etc.

## The Law

- A body of rules for the guidance of human conduct which are imposed upon and enforced among the members of a given state
- Must be:
  - Extensive, because they must cover a wide range of human behaviour and circumstances
  - Dynamic, because things are always changing

## Canadian System

- Common law country
  - Canadian courts decide cases by looking at and adapting what courts have done in previous cases
- Adversarial System
  - Each party is represented by counsel, whose role is to advocate their client's position
  - Court plays relatively passive role
  - System emphasizes procedural fairness
- Judicial Structure
  - Supreme court ← provincial/territorial courts of appeal ← Provincial/territorial superior courts ← provincial/territorial courts
  - Supreme court's decisions binding on lower courts, but can reverse their decisions. Also deal with constitution

## Court process

- criminal issues (liberties)
  - Police investigate allegation
  - Defendant charged in name of people for violating criminal law
  - Presumption of innocence
  - Prosecution bears burden of proof
  - ...
- civil issues (financial)
  - Two or more parties (plaintiff and defendant)
  - One party alleges violation of a statute/provision of common law
  - Standard of proof is on a balance of probabilities, but again not beyond a reasonable doubt (has to go beyond say, 51%)
    - Balance of probabilities like 51-49%

## Elements of a crime

- **Actus reus**: the physical element of a crime (guilty act)
- **Mens rea**: the mental element of a crime (guilty mind)
  - Intention, knowledge, recklessness

### **Example 1**

- Walking out of a store forgetting to pay for something
  - Actus reus there, mens rea not there

## Expert Testimony

- Expert witness - provides court with information that assists the court in understanding an issue of relevance to a case
  - Could be an opinion
  - Often allowed to draw inferences based on their observations
  - Testimony must be deemed reliable and helpful to the court
  - Role is to educate the court, not advocate
  - \*Trained in some special field relevant to the field
- Have court restrictions in terms of who can be an expert witness and what kind of information/testimony can be given by the expert witness
- Need not necessarily an educational credential, but some professional expertise
- Criteria
  - Relevant: addresses an issue central to the matter at hand
  - Necessary (specialized): goes beyond everyday knowledge and experience
  - Must not violate any other rules of exclusion (worthwhile): probative value exceeds prejudicial impact, time and complexity
  - Qualified expert: offered by duly qualified person using accepted procedures
  - (relevant, specialized, worthwhile, qualified)

## Applying Psychology to Civil Proceedings

- Civil domain: health
  - Civil commitment
  - Competence to consent to treatment
  - Personal injury
    - To what extent is that due to that traumatic event, and how much should they be compensated for that injury?
- Civil domain: children and families
  - Parenting capacity - able to provide child's current/expected needs? What is the best arrangement?
  - Guardianship
  - Risk for maltreatment - risk for abuse or neglect? How can that be minimized?
- Civil domain: Employment and education
  - Fitness for duty/reasonable accommodation
    - E.g. police officer returning to the field, right to employment and reasonable accommodation for that
  - Discrimination and harassment
  - Workplace violence
  - Disability

## Civil Commitment

- Civil commitment
  - Involuntary treatment or hospitalization of individuals on the grounds that they pose a risk to themselves or others on account of mental disorder; protect public and individual
    - Parens patriae powers: to act as guardian or caretaker for individuals who are deemed unable to make decisions about their own health and welfare because they are too physically or mentally ill
    - Police powers: to control people who threaten public order, whether or not they are physically or mentally ill
  - Legislation requires: mentally ill, need of treatment, pose some danger or threat to the safety of themselves or others
  - \*\*has to be imminent threat of harm, serious harm, has to be an acute mental disorder (present now)--serious and often temporary disturbances of that mental disorder, generally a short term commitment (up to 72 hours)
- Civil commitment in BC
  - 1. Has a mental disorder
  - 2. Requires treatment or requires care, supervision and control in or through a designated facility to prevent the person's substantial mental or physical deterioration or for the protection of the person or others
  - 3. Cannot be suitably admitted a voluntary patient
- Procedure
  - 1. Attention of person in authority

- 2. Gather and review all available information to make commitment decision
- 3. Case review and new decision
  - If held for longer period of time, cycle repeats
- Evaluations
  - Mental disorder (established diagnosis) → causal Nexus → Risk to self or others (risk assessment, of what could happen)
    - Causal nexus: not sufficient alone to have a mental disorder. Most people with mental disorders will not be violent, and in fact they are more likely to be victimized than they are to commit violence. Have to make the connection between risk assessment and mental disorder.
    - Problem: no good tool for causal nexus. Have to make an argument based on research, person's background, our understanding of mental disorders and associated behaviours to determine whether they are high risk.
      - Some disorders are easier to diagnose, some difficult. Some are more associated with violence, some not. Also difficult to say what is likely to happen rather than what happened

### **Competence to Consent to Treatment**

- Often an issue in civil commitment context
- Differs across jurisdictions
  - E.g. BC - explicitly provides for treatment of competent person against their will
  - ON - permit competent patients an absolute right of refusal

# Deception

## Exam

- Short answer and MC
- Textbook and lecture except researcher profiles
- Fact-based and application

## Behavioural cues to lying

Verbal	Nonverbal
-speech fillers -speech errors -pitch of voice (higher) -rate of speech (slower) -speech pauses	-gaze aversion -smiling -blinking -fidgeting -hand or finger movements -body movements -shifting positions

- Related to verbal: people who are telling a lie tend to tell simpler stories, and the stories tend to be a little less coherent and lack logic
- Many of nonverbal cues thought to be a clue of lying, but no strong empirical support
  - Assumption is people are anxious when lying but some people don't feel anxiety in the same way most people do, which would affect how the cues show up

## Can we tell when someone is lying?

- Not very well
- Looking at general population and professionals, we don't do a great job at detecting liars (slightly better than chance)
  - Develop techniques to improve detection
- Reason we're not great at this is because we're relying on cues that don't have strong empirical support
- Also a truth bias--bias to believe that people are telling the truth more so than deceptive (maybe different bias for law enforcement personnel?)
- Confidence  $\neq$  accuracy
- Bit of research showing professionals can do better than chance
  - Ekman and O'Sullivan
    - Federal polygraphers, investigators, judges, undergrads, etc. all performed the same
    - Secret service agents were best at deception detection -- used multiple cues to determine
  - More recent research showing police officers do better than chance and more experienced police officers do better than less experienced; Mann, Vrij, and Bull





# Police Interview and Interrogation Practices

## Introduction to Forensic Psychology

### RCMP 'E' division interview team

- Full-time police interviewers
- Major crime investigators
- 300+ suspect interviews/year
  - Homicides
  - National security investigations
  - Major crimes
- Perishable skill -- need appropriate interviewing skills, training, framework to ensure admissible statements are obtained consistent with Canadian law

### Objectives of police interviews

- Obtain admissible statements from accused persons that can be used as evidence in court
  - Admissions that can be corroborated
    - confessions derived from coercive measures wouldn't be admissible and thus have no value
  - Explanations that make sense of evidence gathered
    - Explanations often come from those involved in offence or those who saw it
  - 'Provable lies'
    - A lie that can be proven to be inaccurate is a powerful lie
- The use of persuasion and strategy to advance investigations has been endorsed by the courts
  - Within constraints of law - persuasion (securing someone else's agreement of doing something) vs coercion
  - What you can't do is moral persuasion (more to come)
- Most information is best information

### Importance of police interviews

- Confession to a crime by an accused person is compelling as evidence
- But there is a risk of false confessions!
  - Recognized by the courts and academics
  - Linked to wrongful convictions of innocent persons
  - Associated to police conduct
- Police's job -- minimize risks of false confessions
  - Will you know?
  - We don't know much about their occurrence rate, don't have much of a history of documented false confessions











# Juries, Sentencing and Parole

Small percentage of trials have juries but still huge area of focus for forensic psychologists

## Jury

- A group of people convened to make a legal decision by functioning as a trier of fact
  - Trier of fact: the legal decision-maker who decides the facts relevant to a dispute
  - Selected at random to represent the population
- Juror: person who sits on a jury

## Juries: functions

- Primary function: apply law to render a verdict
- Other functions
  - Use wisdom of 12 (jurors) to reach verdict
  - Conscience of community
  - Protect against out-of-date laws
  - Increase knowledge of justice system

## Juries

- Juries act: legislation that outlines eligibility criteria for jury service and jury select
  - every province has legislation -- minimum age requirement, no criminal history, certain professions exempt from duty
- → jury summons: court order stating time and location for jury duty
- → challenges: to identify people who are unfit to serve on jury such as hardship (physical, financial), personal experience that may bias a person
  - Peremptory (lawyer does not need to provide reason for why they want to remove someone from the jury pool)
  - for cause (need reason for rejection)

## Fundamental characteristics of juries

- Representativeness
  - Jury composition that represents the community where the crime occurred
  - Random selection - any eligible person has a chance to be on a jury
  - R. v. Nepease
    - Aboriginal peoples and aboriginal women were not represented
- Impartiality
  - Characteristic of jurors who are unbiased
  - R. v. Guess
    - Guess was one of 12 jurors - ran into the person accused of gang-style murder in bathroom → escalated to sexual relationship during trial
    - They were charged with obstruction





# The Role of Mental Illness in the Criminal Justice System

-- Guest Lecture, Ilvy Goossens --

## Fitness to Stand Trial

### Fitness to stand trial

- Mental state at the time of the trial
- Unfit to stand trial: inability to conduct a defence at any stage of the proceedings on account of a person's mental disorder
- In Canada, presumption of fitness -- so unless crown or lawyer brings up issue, judge will assume you are fit.
- Bill C-30 one of the legislations that helped to shape fitness -- before this bill, no guidelines really
  - Now there's 3 parts to fitness and to a fitness assessments
    - 1. Understand the nature or object of the proceedings (know what you are being charged with)
    - 2. Understand the possible consequences of the proceedings (e.g. what does it mean if you take a plea deal? What does it mean if you are found guilty?)
    - 3. Communicate with counsel

### Fitness: Taylor Test

- Between Bill C-30 and R. v. Taylor (1992), defendants should be able to communicate with counsel as rational agents
- With R. v. Taylor, bar set way low -- test for fitness at 'limited cognitive capacity'
  - They don't need to be able to act rationally or in their best interest
  - With this, they just need to be able to state facts
  - E.g. if someone with paranoia wants to fire their lawyer and act not in their best interests, they are allowed to do that

### Fitness evaluations

- Raised when?
  - At any time during proceedings, by either defence or Crown
- Who assesses?
  - Canada: medical practitioner
  - Most risk assessment manuals are designed by Forensic psychologists who cannot use the manuals themselves.. Often psychiatrists who will assess fitness
  - Under Youth Criminal Justice Act, Forensic psychologists can conduct risk assessments
- How often does fitness get raised?





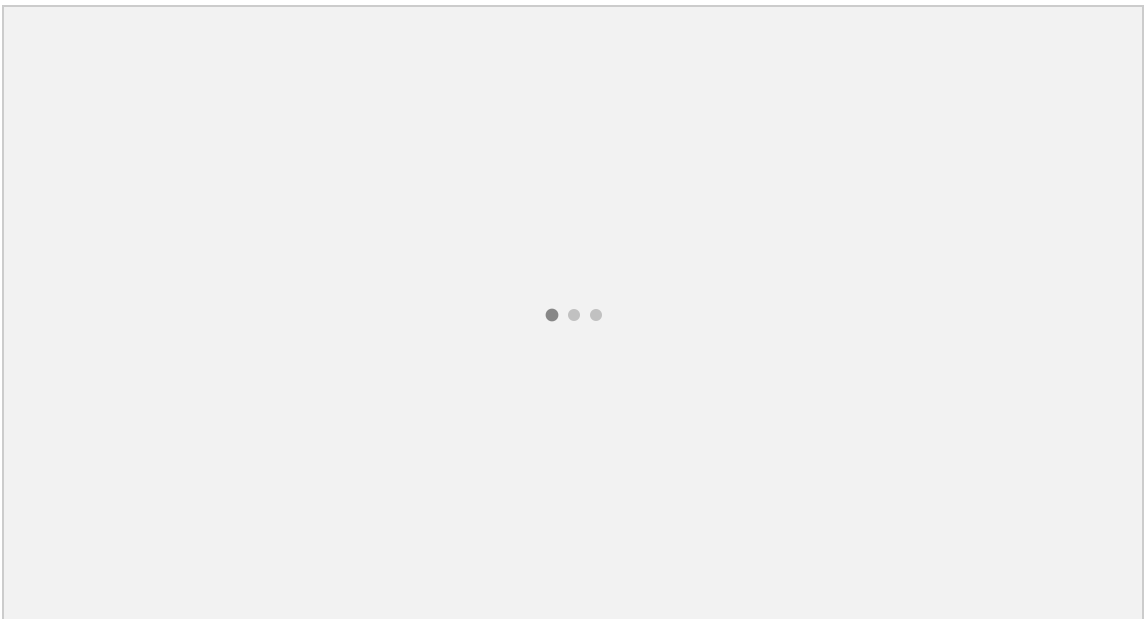
# Psychopathy

## Psychopathy

- Personality disorder defined by collection of interpersonal, affective, and behavioral characteristics
- Traits
  - Manipulation
  - Lack of remorse/empathy
  - Impulsivity
  - Antisocial behaviours
  - Superficial charm
  - Pathological lying
- See themselves as predators
- Not to be confused with psychosis
- Understand that what they're doing is wrong cognitively

## Early description

- Hervey Cleckley (1976) - mask of sanity











# Risk Assessment

## PAPER

- Due by next class

## When might risk assessments occur in the criminal domain?

- Bail - does person pose risk to public and should person be held w/o bail?
- Sentencing (decisions)
- Dangerous offender hearings -- Itoh (can be managed in community)
- Other: intake assessment, probation/parole, NCRMD, review board
- May be conducted at any given point in the criminal justice system

## Violence

- Actual, attempted, or threatened physical harm that is deliberate and nonconsenting (general violence) used by HCR-20
  - Includes violence against victims who cannot give consent
  - Includes fear-inducing behaviour, where threats may be implicit or directed at third parties
  - Excludes harm against animals
  - Excludes sanctioned acts within military, law enforcement, sports

## What is risk assessment?

- Historically: dangerous / not dangerous (tried to predict violence)
- Current
  - The process of gathering information about people in a way that is consistent with and guided by the best available scientific and professional knowledge to
    - Understand their potential for engaging in violence in the future, and
    - Determine what should be done to prevent them from doing so
  - Critical: violence prevention, not prediction

## Violence risk assessment goals

- Primary goal: prevent harm to others
- Additional goals
  - To be accountable
    - To stakeholders
    - Need to be transparent and consistent -- to whoever is involved in the case
  - To protect
    - Public
    - Legal rights of evaluatees or evaluators





# Juveniles in the Criminal Justice System

## History of Juvenile Justice

- Prior to Juvenile Delinquent's Act, juveniles were often treated the same as adults; not much of an understanding in terms of cognitive and developmental differences
- 1908 - Juvenile Delinquent's Act
  - Youthful offending - a symptom of the disease 'delinquency,' caused by society and family (external forces)
  - Young offenders denied procedural rights - didn't go through the same process that adults went through in terms of the rights and protections in place
  - Indeterminate sentences permitted (because treatment based vs. punishment based)
  - Separate courts and correctional facilities established (in theory were meant to be run by people with special expertise in dealing with juveniles - not always the case)
  - Age: 7-18
- 1984 - Young Offender Act
- 2003 - Youth Criminal Justice Act

## Criticism and concern with JDA

- Lack of due process
- Inequity of trying and holding youth for non-criminal behaviour
- Efficacy of treatment programs
- Shift in perspective that youth need to be held accountable for their criminal behaviour

## Young Offenders Act (1984)

- Shift in how youth were dealt with in law
- 1) young offenders held responsible for their criminal behaviour (12-18)
  - Under 12, dealt with child and family services
- 2) idea to protect society from criminal behaviours
- 3) Youth should be afforded all Charter Rights (had due process)
- 4) young people have special needs and should not be held accountable in the same manner or to the same extent as adults (e.g. due of lack of maturity)
- ...
- Concerns and criticisms that those committing minor crimes → overly punished and those committing major offenses → under-punished; in general, inconsistencies across the board





## Definitions

- **Domestic violence:** any violence occurring between family members
- **Intimate Partner Violence:** violence committed by legally married, separated, divorced, common-law, dating opposite and same sex partners (current and previous)
- (most violence occurs between people who know each other)

## IPV

- One of the most common forms of violence against women, nationally and internationally (recognized by WHO)
  - Global lifetime prevalence of physical/sexual violence in intimate relationships: 30%
  - 38% of all murders of women were committed by their intimate partners
- Includes; verbal abuse, emotional abuse, sexual violence, physical assaults, homicide

## Measuring violence: CTS-2

- Conflict tactics scale (CTS2)
  - Measures psychological and physical attacks on a partner in dating, cohabiting, or marital relationships, and their use of negotiation to deal with conflicts
- 5 categories
  - Negotiation
  - Psychological
  - Physical
  - Injury
  - Sexual coercion

## CTS cont'd

- Criticism
  - Introduction to measure
  - Exclusion of context variables
    - When and why it happened
  - Exclusion of motivational factors

## IPV in Canada

- 2013 stats
- >90k victims of police reported IPV in 2013
  - Likely underrepresentation, and men less likely to report
  - Quarter of all police-reported violence
- 80% of victims = female
- Physical assault most common - 75% report it





### Sexual Violence

- Sexual assault - defined broadly as any assault that transpires in circumstances of a sexual nature
  - 3 levels
    - Level 1 - assault of a sexual nature that violates sexual integrity of person or sexual activity forced upon another person (no injury, max sentence of 10 years)
    - Level 2 - sexual assault with weapon or causing bodily harm (max 14 years)
- Level 3 - aggravated sexual assault - in committing a sexual assault, wounds, maims, disfigures or endangers the life of the compliant (max life penalty)
- Other sexual offences
  - Non-contact offenders (voyeurs [watching unsuspecting people], exhibitionists)

### Sexual violations against children

- Levels 1-3 can occur with children but certain offences are specific to victimizing children < 18
- Sexual exploitation: touching, directly or indirectly, a young person's body for a sexual purpose where perpetrator was in a position of authority/power or trust over the victim
- Sexual interferences: person touches directly or indirectly touches body part of a child under 16 ?
- Invitation to sexual touching: inviting child under 16 to touch body parts, directly or indirectly, of an adult
- Making sexually explicit material available to a child
- >30% between 2015-2016 (police-reported, mostly sexual interferences)
- Rates of child pornography increased (41%)

### Problems with reporting

- Children - fearful of what will happen to them or to their parents/family, don't think they will be believed, think they are to blame, don't understand/not aware it was wrong
- Has to tell adult → bring in complaint

### Pedophilia

- Sexual attraction to children who have not yet begun puberty
  - Prevalence estimated ~5% of general population
- Although often used synonymously with child molestation, not equivalent



