

# INSTRUCTOR'S MANUAL

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# Forensic Psychology

## Second Edition

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Toronto

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# Preface

As instructors ourselves, we appreciate the need for supplemental materials to support a textbook. We wanted to provide these supplemental materials for use with our forensic textbook, 2<sup>nd</sup> edition. We wanted to ensure that instructors had supplements to make their course a success. We hope that these supplements will offer you suggestions and ideas to enrich the student experience in the classroom. We have decided to include the supplements that we find most useful when teaching. We hope that you too will find that these supplements support your teaching objectives.

We value your input and look forward to hearing about your experiences with the book and supplements. We hope that you will provide us with your feedback and suggestions so that we can continue to revise these materials in order to offer you the most useful and supportive information. Good luck with your course.

## SUPPLEMENTS

**Instructor's Manual.** The instructor's manual is a comprehensive resource that provides chapter outlines, class activities, and summaries of select cases cited. We hope you will use the textbook and instructor's manual as a foundation to build on in the classroom lecture.

**Test Item File.** The test bank offered in Microsoft Word format, contains multiple choice and short answer questions. Each question is classified according to difficulty level and is keyed to the appropriate page number in the textbook. We have added a number of new questions to reflect the revised content.

**PowerPoint Presentations.** PowerPoint slides highlight the key concepts in each chapter of the text.

## ACKNOWLEDGEMENTS

We would like to thank the students that were instrumental in creating these supplements: Julie Blais, Laura Hanby, and Rebecca Mugford. We also would like to thank the family at Pearson Education Canada.



## CHAPTER 1

### An Introduction to Forensic Psychology

#### LEARNING OBJECTIVES

- Provide a narrow and broad definition of forensic psychology.
- Describe the differences between clinical and experimental forensic psychology.
- List the three ways in which psychology and the law can interact.
- Describe three major psychological theories of crime.
- List the criteria used in Canada to decide when expert testimony is admissible.

#### OUTLINE

##### What is Forensic Psychology?

- Forensic psychology can be defined using either a narrow definition or a broad definition. A narrow definition is precise and tends to focus on application, yet it excludes aspects of the profession. In contrast, a broad definition attempts to include all aspects of the discipline, focusing on application as well as the research needed to inform applied practice.
- Generally, *forensic psychology* can be defined as a field of psychology that deals with all aspects of human behaviour as it relates to the law or legal system.

##### The Roles of a Forensic Psychologist

- *Clinical forensic psychologists* focus on mental health issues as they apply to the legal system. They may engage in both research and practice in a variety of settings. Qualifications for a licence to practice clinical forensic psychology varies across Canada, however at least a Master's degree in psychology is required in each Province.
- *Experimental forensic psychologists* engage in research regarding human behaviour in relation to the legal system. Qualifications involve graduate training in psychology and research in the forensic area.
- In contrast, a legal scholar may focus on analyses of mental health legislation and psychologically-based legal movements. Qualifications to be a legal scholar include a Ph.D. in psychology and typically an L.L.B. in law.

##### The Relationship Between Psychology and Law

- Psychology and the law can interact in three ways: psychology *and* the law, psychology *in* the law, and psychology *of* the law (Haney, 1980).
  - *Psychology and the law* refers to examining the operation of the legal system from a psychological perspective. For example, a psychologist may conduct a laboratory study to determine whether a particular type of police line up results in accurate identifications.

- *Psychology in the law* is the use of psychological knowledge in the legal system as it currently operates. For example, a parole board may use a psychologist's report when deciding whether to release an offender.
- *Psychology of the law* refers to the application of psychology to the study of the law. For example, a psychologist might attempt to determine why some people obey the law while other people do not.

### **The History of Forensic Psychology**

- The history of forensic psychology dates back to the late 1800s. Early research in the area centered on eyewitness testimony and suggestibility.
- Around the same time, psychologists around the world began providing expert testimony surrounding issues such as the effect of pretrial publicity and the susceptibility of children to suggestion, often making reference to experimental research.
- Some suggest forensic psychology arrived in North America with Munsterberg's *On the Witness Stand* (1908). In his book, Munsterberg detailed ways that psychology could assist the legal system. However, a psychologist did not provide expert testimony in North America until 1921. Classic U.S. court cases included *Brown v. Board of Education* (1954) and *Jenkins v. United States* (1962).

### **Psychological Theories of Crime**

- Many early psychological theories began to emerge after the post-war period.
  - *Psychodynamic theories* emphasize the dynamic internal forces and early childhood experiences of the offender. For example, Bowlby's (1944) *theory of maternal deprivation* suggests that antisocial behaviour resulted from early separation of a child from his or her mother.
  - *Learning theories* highlight the role of reinforcement in criminal activity. For example, Bandura (1973) postulates in his *social learning theory* that crime resulted from direct and indirect reinforcement for antisocial behaviour.
  - *Personality theories* emphasize differences between the personalities of offenders and law abiding citizens. For example, Eysenck's (1977) *biosocial theory of crime* asserts that the combination of neuroticism and extroversion is overrepresented in the offender population. Eysenck believed this combination resulted in a failure to learn from consequences of behaviour.

### **Modern-Day Debates: Psychological Experts in Court**

- The expert witness has two potential functions: (1) to help the court understand a particular issue and/or (2) to provide an opinion (Ogloff & Cronshaw, 2001). The fact that experts are allowed to testify about their opinions in court is what separates them from regular witnesses.
- Difficulties in providing expert testimony often arise, due in part to the inherent differences between psychology and law. These differences include the manner in which knowledge is obtained, the methodology used to investigate the truth, and principles of the fields (Hess, 1987, 1999).
- For example, psychologists tend to use a *nomothetic approach* in an attempt to understand phenomena, whereby they attempt to uncover broad patterns and trends.

In contrast, the law adopts an *idiographic approach*, whereby an event is understood by examining specific details of individual cases.

- To be considered by a judge or jury, expert testimony must meet specific admissibility criteria.
  - One set of criteria in the United States is referred to as the “*general acceptance test*” (*Frye v. United States*, 1923). This test requires that testimony be based on scientific principles that are generally accepted within the scientific community.
  - More recently, the *Daubert* criteria have been proposed (*Daubert v. Merrill Dow Pharmaceuticals Inc.*, 1993). According to *Daubert*, expert testimony must: (1) be given by a qualified expert, (2) be relevant, and (3) be reliable.
  - In Canada, the admissibility of expert testimony is based on criteria outlined in *R. v. Mohan* (1994). According to these guidelines, testimony is admissible if it: (1) is relevant, (2) is necessary, (3) does not violate any exclusionary rules, and (4) comes from a qualified expert.
- Although such criteria may make it easier for judges to decide what testimony to allow in court, it is still problematic in that it is subjective and is highly dependent on the discretion of the judge.

## **SUGGESTED LECTURE ACTIVITIES**

### **Definitions of Forensic Psychology**

- Ask students whether they prefer a narrow or broad definition of forensic psychology and get them to explain why.

### **Relationship Between Psychology and the Law**

- Provide students with examples of either: psychology and the law, psychology in the law, or psychology of the law. Have them discuss the category that they feel they can contribute most to and have them explain why.

### **History of Forensic Psychology**

- Describe early research in forensic psychology (e.g., research conducted by Cattell [1895] or Stern [1901]). Ask students to discuss the strengths and weaknesses of the research design employed.
- Conduct a reality experiment in class and have the remaining students attempt to recall information about the event.

### **Psychological Theories of Crime**

- Divide students into three groups and assign each group to one of the major categories of crime discussed in this chapter. Have each group discuss the strengths of their theory to the rest of the class and debate potential weaknesses.

### **Psychological Experts in Court**

- Based on Hess' (1987, 1999) seven differences between psychology and law, ask students to discuss some obstacles that an expert may face in their role as an unbiased

witness. Have students discuss how an expert may overcome these obstacles and what systematic changes could be made by the legal system to prevent these problems.

- Provide an example of eyewitness expert testimony (use one of the early court cases, such as Schrenck-Notzing's testimony discussed in the textbook). Divide students into three groups (one group represents the prosecutor, another the defence, and the third will be judges). Ask the prosecution group to argue that the testimony would meet the *Mohan* criteria, ask the students representing the defence to argue against the testimony, and ask the judge group to make the final decision and discuss their reasoning).

## SUGGESTED READINGS

Goldstein, A.M. (Ed.). (2007). *Forensic psychology: Emerging topics and expanding roles*. New York: John Wiley & Sons.

Hess, A.K., & Weiner, I.B. (Eds.). (2006). *The handbook of forensic psychology* (3<sup>rd</sup> edition). New York: John Wiley & Sons.

Ogloff, J.R.P. (Ed.). (2002). *Taking psychology and law into the 21<sup>st</sup> century*. New York: Kluwer Academic.

Roesch, R., & Gagnon, N. (Eds.). (2007). *Psychology and law: Criminal and civil perspectives*. London: Ashgate Publishing Limited.

Roesch, R., Hart, S.D., & Ogloff, J.R.P. (Eds.). (1999). *Psychology and law: The state of the discipline*. New York: Kluwer Academic.

## SUMMARY OF COURT CASES

### *Jenkins v. United States (1962)*

Facts:

- Jenkins was charged with breaking and entering, assault, and intent to rape, pleading not guilty by reason of insanity.
- Three clinical psychologists were presented by Jenkins as expert witnesses.
- The trial judge concluded that psychologists were not qualified to offer expert opinion on issues related to mental illness.
- On appeal, the court reversed the conviction and ordered a new trial, concluding that some psychologists are competent to provide expert testimony on such issues.

Summary:

During his trial, Jenkins presented three clinical psychologists to provide expert testimony supporting his defence of insanity at the time of the crimes. Based on interviews and reviews of his case history, all three psychologists determined that Jenkins had been suffering from schizophrenia at the time the offences took place. Two of the psychologists offered the opinion that they believed the crimes were related to his illness.

At the end of the trial, the judge ordered the jury to discount the testimony given by the psychologists, as they were not qualified to offer their opinion concerning the effect of mental illness in a court of law. On appeal, the American Psychological Association submitted a brief to the court indicating that psychologists are competent in this regard. The conviction of Jenkins was reversed, a new trial was ordered, and it was ruled that given appropriate experience and knowledge psychologists are qualified to provide expert opinion on matters related to mental illness.

***R. v. Hubbert (1975)***

Facts:

- Hubbert was charged and convicted of murder while under the supervision of a Lieutenant-Governor warrant.
- The fact that the defendant was under the care of the Penetanguishene Mental Health Centre at the time of the murder came out during the trial.
- The defendant pleaded not guilty and argued that he did not receive a fair trial because the jury was biased by his previous incarceration at the hospital for an unrelated incident.

Summary:

The defense lawyer believed that the jury would most likely be biased against Hubbert due to his status as a patient of Penetanguishene. Therefore, he requested that a psychiatrist give expert testimony regarding the likelihood that the jury would convict his client based upon his mental health status, and the nature of the murder, not upon evidence. The trial judge did not allow the psychiatrist's opinion. After Hubbert was convicted, the case was appealed to the Ontario Court of Appeal; the judge ruled that the psychiatrist would not have had the expertise to determine whether the knowledge of Hubbert's past incarceration at Penitanguishene would have biased the jury. He also ruled that whether the jury would be biased was irrelevant according to the instructions given to jurors by the judge, "to base their decision upon the evidence presented". The judge further iterated that the court could not concern themselves with individual personality characteristics of jurors, but rather the courts responsibility is to ensure that jurors are properly instructed how to fulfill their responsibilities. The defense appealed to the Supreme Court of Canada. The appeal was dismissed and Hubbert served a minimum sentence of 15 years.

***R. v. Lavallee (1990)***

Facts:

- Lavallee shot her abusive husband after being threatened by him "to kill him or he would kill her".
- There was considerable evidence that the accused was a victim of domestic violence.
- The defendant claimed self defence.
- A psychiatrist submitted testimony in support of the defendant based upon subjective interviews and police reports.

Summary:

After being found not guilty for killing her abusive husband the crown appealed to the Manitoba Court of Appeal arguing that Lavallee's psychiatrist gave testimony that

was based upon personal interviews with the accused, the police and her mother. At issue was the fact that the jury was not adequately warned that the doctor's testimony was based upon subjective evidence. Additionally, the jury was not instructed to give the same amount of credence to the medical testimony than to the other evidence presented in court. The crown was successful and a new trial was ordered. The defense appealed to the Supreme Court of Canada, which in 1990 set aside the order from the Manitoba Court of Appeal and restored the acquittal. The Supreme Court decision also included principles to guide decisions about expert testimony in cases of battered women.

***Wenden v. Trikha (1991)***

Facts:

- Trikha was involved in a motor vehicle accident in which Wenden was injured.
- The appellant was under the care of a psychiatrist at the time of the accident and was experiencing psychotic and depressive symptoms.
- Wenden attempted to hold the psychiatrist and the hospital responsible for the damages incurred.
- Damages were awarded to the plaintiff, however the doctor and hospital were not found liable.
- Trikha was found liable for negligence, but not criminally responsible due to his psychiatric condition.

Summary:

Wenden was struck by Trikha's vehicle and suffered substantial neurological and psychological injuries as a result. Trikha argued that he was driving his car radically and couldn't conceive the consequences of his behaviour due to his psychotic disorder. At issue in this case was the duty of care the psychiatrist and hospital have to reasonably perceive that Trikha would be a danger to others. The Alberta Court of Queen's Bench ruled that the doctor and hospital were not responsible because they had provided an appropriate level of care according to the behaviour Trikha was exhibiting at the time of being treated. The court also denied Wenden damages for her in-vitro child because the fetus had not suffered medically as a result of the accident, and the care Wenden was unable to provide to her baby after it was born, following the accident, was too remote to be connected to the accident. The plaintiff and the respondent (Trikha) appealed their decisions to the Alberta Court of Appeal. Both cases were dismissed. The plaintiff then appealed to the Supreme Court of Canada. The case was dismissed with costs awarded to Wenden.

***R. v. Levogiannis (1993)***

Facts:

- Levogiannis was charged with sexual interference after sexually assaulting a young boy.
- After a psychologist testified that the victim was experiencing substantial fear of the assailant and, in his opinion, the child would be unable to give a frank and honest account of the assault in court, the judge ordered a screen be used during the trial. The child gave his testimony while his view of the appellant was blocked.
- The appellant argued that the presence of the screen violated his charter rights.

**Summary:**

Levogiannis appealed his conviction for sexual interference to the Ontario Court of Appeal. The defendant argued that the presence of the screen violated his section 7 and 11 rights under the Canadian Charter of Rights and Responsibilities, which grants persons the right to be presumed innocent until proven guilty and the right to a fair trial. Levogiannis stated that the presence of the screen biased the judge by causing him to appear to be guilty. Furthermore, he believed that the screen interfered with the court's ability to fully cross examine the victim. However, the Appeal judge ruled that because the screen only blocked the child's view, and everyone else in the court including the defendant could face the complainant, the use of the screen did not violate the accused charter right to a fair trial. Concerning the right to be presumed innocent, the Ontario Court of Appeal judge ruled that the screen did not influence the judge's opinion. The case was appealed to the Supreme Court of Canada. Levogiannis' conviction was upheld and his appeal was dismissed.

***R. v. Mohan (1994)*****Facts:**

- Mohan, a paediatrician, was charged with sexual assault of four teenage patients.
- As part of Mohan's case, the defence wanted to provide expert testimony from a psychiatrist on how Mohan did not fit the 'type' of person who would commit such an offence.
- The judge ruled that the testimony was inadmissible.
- On appeal, the Supreme Court of Canada agreed, and established the admissibility standard for expert testimony.

**Summary:**

During trial, Mohan's defence attempted to provide expert testimony from a psychiatrist, Dr. Hill. Dr. Hill intended to testify that Mohan could not be the perpetrator of sexual assaults against several of his teenage patients, as the true perpetrator would belong to a group of unusual individuals, and Mohan did not fall within this group (i.e., he did not possess the characteristics that were indicative of this type of individual). At a voir dire, the trial judge ruled the evidence would not be admitted. On appeal, the Supreme Court of Canada upheld Mohan's conviction and established the Mohan criteria, outlining the admissibility standard for expert testimony within Canadian courts. The criteria include: the testimony must be necessary to provide additional relevant information to the judge and jury, the evidence presented must be relevant, the evidence must not violate any rules of exclusion, and the testimony must be provided by a qualified expert.

***R. v. William (1998)*****Facts:**

- Williams, an aboriginal male, was charged with robbery and pleaded not guilty. Subsequently, he chose to be tried before a jury.
- The trial judge did not allow the defense to question jurors in order to determine if they held prejudicial views against aboriginal peoples.
- The accused argued that someone else had committed the robbery and that the presence of discrimination against aboriginal people biased the jury.

Summary:

This case serves as an indication of whether jurors can be questioned as to any preexisting racial biases towards the defendant that may adversely influence their impartiality as jurors. At William's first trial, the judge allowed questioning of potential jurors; however, the Crown successfully claimed a mistrial in part due to the high publicity of the jury selection process. During William's second trial, the judge dismissed the accused's request to challenge the jurors in an attempt to determine whether or not they held any biases towards the defendant as an Aboriginal. In addition, the judge failed to inform the jury that they must disregard any bias or prejudice they possessed toward Aboriginal peoples. On appeal at the Supreme Court of Canada, it was held that the jury pool should consist of those who can serve impartially, and that in instances where the defence can show that a possibility of partiality exists, they should be permitted to question the jury. It was concluded that numerous types of juror prejudice could have influenced William's conviction, thus the appeal was allowed and a new trial was ordered.



Because the practice of forensic psychology differs in important ways from more traditional practice areas (Monahan, 1980) the Specialty Guidelines for Forensic Psychologists were developed and published in 1991 (Committee on Specialty Guidelines for Forensic Psychologists, 1991). Because of continued developments in the field in the ensuing 20 years, forensic practitioners' ongoing need for guidance, and policy requirements of the Forensic psychologists must be licensed to practice psychology in their state. Generally, you need to have a doctorate in psychology and one to two years of clinical experience under the guidance of a mentor to qualify for licensure. Until recently, forensic psychology degrees were quite rare. The most common approach was to obtain a master's or doctoral degree in an established subfield of psychology or in criminal justice, and to take supplemental coursework that relates to the legal system. I launched All-About-Forensic-Psychology.Com in 2006 in order to help anybody looking for comprehensive information and resources. Whatever your connection with forensic psychology - student, educator, professional or general interest - I sincerely hope that you find All-About-Forensic-Psychology.Com a useful and engaging place to visit. The Thinking Behind The Website. In recent years the discipline of forensic psychology and related topics such as psychopathy and criminal profiling have been the subject of The importance of forensic psychology is undeniable. Forensic Psychology Online is here to serve as an online resource regarding this field. Professionals in this field have proven that this practice is an irreplaceable asset to our system of justice. Every day, forensic psychologists serve in a number of different capacities to ensure that our communities are safer places than they were the day before.