The Roles of Forensic Mental Health Experts in the Legal System: What Practitioners of Law May Need to Know

[1]Features
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Abstract

Forensic mental health is the crossroads that lies between the criminal justice system and the science of mental health. It requires the forensic practitioner not only to understand complex human behaviors, cognitions, psychopharmacology, brain science, and psychology, but also how to deal with critical legal aspects as those human dimensions intermingle with the law and the legal system as a whole. When seeking a mental health expert witness, it is the foremost important objective for law professionals, then, to fully understand the sought-after expert?s role(s), abilities, and skills when engaging her or him in court or other type of legal and civil cases. It is also crucial to have basic knowledge of the psychometric tools used by those experts, what forensic evaluation(s) are needed for different legal cases and matters, and who of the various forensic mental health experts is actually able to render desirable services?efficiently and effectively. This article aims to help law professionals, and those involved, understand the mental health role(s) of experts, their diverse abilities and skills, and then how to select the most fitting expertise for the case on hand.
The field of forensic mental health has grown considerably during the past two decades, impacted by a growing body of research, literature, a changing health care system, communication technologies, and interests in understanding human behaviors, brain functions, and psychological dysfunctions. Forensic mental health is an intertwined junction between the fields of psychology, psychiatry, counseling, social sciences, and the justice system. It deals with the legal aspects of human behavior and its application of psychological principles and knowledge to a range of legal activities such as custody disputes, child abuse, competency to stand trial, sanity defense, personal injuries, mental capacity and guardianship, and much more. Broadly speaking, forensic mental health is the application of the aforementioned fields and expertise (psychology, psychiatry, behavioral sciences, or social sciences) within a legal context (Alison, L. 2008; Coupland, R. A. & Kurtenbach, T. E. 2013).

Other labels used in the field might be legal psychology, law and psychiatry, or law and mental health where a forensic psychologist, for example, is a licensed psychologist who specializes in applying psychological knowledge (e.g., psychological and personality theories, psychiatric or psychological evaluations, psychometrics, and the like) to legal matters, both in the criminal and civil arenas (Heilbrun, Marczyk, and Dematteo, 2002; Tolou-Shams, 2011; Kitaeff, 2011).

The expert testimony of psychologists can play a profound role in the outcome of cases in many courts. Psychological research and testimony, for example, have influenced the practice and ruling of the court of appeals for England and Wales and Northern Ireland (Leslie, Young, Valentine, & Gudjonsson, 2007). Testimonies of mental health professionals can be devastating to the outcome of a case. For example, in Sechrest v. Ignacio, 549 F.3d 789 (9th Cir. 2008), the U.S. Court of Appeals for the Ninth Circuit affirmed that allowing the prosecution access to a psychiatrist?s report retained for the defense and allowing that mental health professional to testify in the penalty phase of a death penalty case represents ineffective counsel.

In May 1983, Ricky Sechrest kidnapped and murdered 10-year-old Maggie Weaver and 9-year-old Carly Villa. In June 1983, he was arrested. While waiting to be booked for an unrelated charge, he confessed to the murder of both girls. Dr. Lynn M. Gerow evaluated Sechrest at defense counsel?s request to determine whether he was fit to stand trial and to evaluate the possibility of an insanity defense. Ultimately, after reviewing Dr. Gerow?s report, defense counsel decided not to call him as a witness and not to pursue an insanity defense (American Academy of Psychiatry and the Law, 2010; Boyer, Martinez, & Wortzel, 2010).

The prosecution asked defense counsel to permit the use of Dr. Gerow?s report and to permit him to be called as a prosecution witness during the penalty phase of Sechrest?s trial. At the penalty phase, Dr. Gerow testified that Sechrest ?was an ?incurable sociopath? with an extensive criminal record and a history of drug abuse.? In September 1983, Sechrest was sentenced to death for each of the two murders. He was also sentenced to two terms of life in prison without the possibility of parole for each of the two kidnappings. Sechrest appealed his convictions and sentences throughout the 1990s, and in December 2004, the district court granted certiorari for his appeal. He presented several claims in his appeal, including that his Miranda rights were violated; that his Sixth and Fourteenth amendment rights were violated by the prosecution?s statements regarding the likelihood of his release from prison; and that his defense counsel provided ineffective counsel by allowing the prosecution to call Dr. Gerow as a witness. In summary, Sechrest?s lawyers failed to protect his constitutional right, and Dr. Gerow failed to inform him that his opinion generated from the evaluation was being used in the penalty phase.

While one might observe the lawyer?s failure to protect a client?s constitutional right, but for the sake of this article, it serves as an important reminder of the forensic mental health expert?s role and the ethics-related responsibilities inherent in a forensic practice. Informed disclosure, consents, and as-related documents must be encompassed in all forensic evaluations. Even when examinations are court-ordered, evaluatees are entitled to know the nature of the examination, for what reasons the examiner is conducting those assessments, and the potential outcomes of those tests.
Practitioners of this science?comprised of shaded gray areas, complexity, and uncertainties?are usually licensed professionals with specialized training that allows the expert to operate within the criminal and/or civil justice system. For over six decades, for example, psychologists provided expert testimony in both criminal and civil courts of law. The goal expected when engaging an expert is to promote not hinder justice. Hence, an expert should be able to help the judge, jury, or attorneys reach a more valid conclusion than would be possible without the expert?s testimony. Forensic mental health experts have to answer questions that are relevant both to the courts and the field. He or she should be able to respond to mental health and related forensic questions with reasonable accuracy, reliability, and validity to help those involved in the legal matter (judges, juries, attorneys, and the like) reach more precise conclusions than would otherwise be possible (Faust and Ziskin, 1988; Nedopil, 2009).

Topics of expert testimonies have included the following: psychiatric assessment, psychological evaluations, malingering, neuropsychological evaluation, psychotherapy, counseling and psychotherapy, criminal and adjudicative responsibility, child custody, brain injury, post-traumatic stress disorder, eyewitness testimony, jury selection, recovered memories, sexual harassment, child neglect and abuse, domestic violence, psychological damage, sanity evaluation, false confessions, depression and suicide, and many more topics as related to mental health issues (Kitaeff, 2011; Terr, 1991). Hence, it is the ability of the mental health professional to render opinions, reach conclusions, and produce findings (usually in a report) in the language of the courtroom that makes the field of forensic mental health desirable and invaluable to the legal system. It is the aim of the science that dictates the professional?s work to reach a conclusion as close to the truth as possible, to investigate what is, or what will be, considering available data, information, facts, collateral information, and possibilities.

For example, the mental health expert may administer a comprehensive psychological evaluation to answer a number of questions: ?Is the defendant insane as she claims?? ?How severe was the neuropsychological damage or impairment when the client endured a traumatic brain injury due to a moving vehicle accident two years ago?? ?Is the sexually accused stepfather a predator, does he possess danger to the society, and how severe or significant is his dangerous behaviors?? ?Will the act of violence most likely than not be repeated, how dangerous or severe is his or her aggression and violence?? ?Will psychotherapy help this parent be a better parent to her children?? ?Will medication stabilize this defendant?s behaviors and psychosis?? ?Will the continuation of Cognitive Behavior therapy be more effective than using Applied Behavior Therapeutic Techniques?? ?Is this defendant competent to stand trial-why or why not?? ?Is she incompetent to manage her 100-million-dollar estate, or should her children that appear to have not been interested in her until now have guardianship rights, and has any bias for either party been considered in this process??

The expert?s goal is to answer many intertwined truths or fallacies. In the aforementioned questions, different experts will be able to answer the questions. The expert might be a therapist, a psychologist, or a psychiatrist or a combination of all. Was the defendant sane at the time he allegedly committed the crime, what was he thinking and what mental status did he endure at the time the crime was committed, what was his psychiatric history and did it have an implicit or unseen impact on his behaviors? Is she able to comprehend a court procedures, understand her attorney?s decisions and reasoning, or is she mentally and physically competent to manage his financial affairs? Is psychotherapy necessary to maintain desirable behaviors or are medications necessary, why was the defendant not been treated for his psychopathology for over a year? Should the defendant be on both?psychotherapy and psychotropics?and did that impact his behavior on the alleged offense? In all of this, the expert is reaching conclusions by assessing, examining, researching, interviewing, discovering, and reporting results to the legal referral entity. His or her goal is to inside the ?black box? (human psyche, cognitions, behaviors, and state of mental health) and see as clearly as possible.

When answering these important questions, the expert seeks to examine, research, analyze, and reach rational conclusions regarding the legal case by attempting to open a window to the partially known or
completely unknown, to uncover and analyze the "black box" to shed light that will allow him or her to reveal what is and what is not, to come as close as possible to the truth, and then report results to the court. The expert is allowing those that sit in judgment of the accused to gaze through a conceptual window, to see what have been overlooked, uncovered, revealed with reason, accuracy that is constructed on two important and essential foundations: validity and reliability. The expert looks into the accused's black box to better understand issues on hand to promote justice and reach many steps closer to the truth. This is a task that not only relies on field knowledge, professionals, skills, and abilities, but also on strong ethics and sense of purpose that will lead the expert's direction in any given case.

Unlike other practicing mental health professionals, the forensic mental health expert is not an advocate on behalf of the client, or defendant, and there is no confidentiality guaranties implied or otherwise agreed upon. He or she is also not permitted to have a dual relationship with that client or defendant (e.g., the expert is not permitted to examine and perform therapy to the same client). He or she is able to do both if the referral is a medical referral and the person is a patient of the treating mental health provider, for example. The mental health expert is just as likely to be testifying for the defense as he/she is for the prosecution. He or she is impartial, neutral, objective, powered by his or her board and mental health law ethics, rules, and regulations.

The goal is to conduct impartial assessment and evaluations of the client or defendant. Their role is to remain neutral and to report just the facts as they are presented. They are seekers of the truth(s), and producers of findings based on facts and results of their evaluations. The role of evaluating a client is challenging, however, because the information obtained by the neutral expert may not always work to the advantage of the accused and/or client. The expert's code of ethics, his or her own ethics and professionalism, must dictate the responsibility of performing an unbiased and fair evaluation, with a neutral stand and view of the case and all those involved.

Still, it is of utmost importance that one decides the type of expert best suited for a case and that the legal professional (e.g., attorney, judge, or a legal entity) selects the most suitable mental health expertise for the best fitting of the case in question. It is imperative to recognize that not all mental health professionals possess the same education, degrees, abilities, skills, and licensures that not all of them do fit for the same purpose you are seeking when appointing to a case. Holding an MD or a PhD does not qualify any expert to be an expert in all areas. Having served a legal entity for a long period of time should not guarantee an expert a continuous hire for all types of cases. Educational background, professional experience, content specific knowledge, skills, character, and abilities should be the identifiers or the deciding factors. The legal entity or professional must do his or her homework and find out if the expert is going to be the right required expert for the case on hand.

Personal liking of the expert, friendships, and connections should be ignored when evaluating an expert. Overlooking those identifiers are common errors some legal professionals make inadvertently. For example, if you wish to assess a client's cognitive and mental status to see if the defendant is competent to stand trial, mentally competent, and evaluate for sanity, then it is best to select a psychologist/neuropsychologist with strong behavioral and brain science experience. If the expert happens to be an academician (researcher) in addition to being a practitioner, then you have both worlds to serve you as an expert for the cost of one! If you wish to investigate the impact of psychotropic medications on a client that suddenly snapped (had a meltdown) and started shooting in the courthouse, you need to engage a psychiatrist in your legal matters. The psychiatrist will assess the impact of combining alcohol, muscle relaxers, pain killers, acetaminophen and diphenhydramine, and insomnia on defendant's behaviors and psychological state during the offense. Most well-trained psychologists and neuropsychologists will be able to advise and make recommendations on this issue, as well. However, if you wish to question why therapy might not have had any impact on your client who abused his 12-year-old son, then you need a licensed clinical social worker (LCSW) or a professional counselor (LPC) to answer the important question of therapy efficacy. Therefore, the following
information (a simple guide) can help the legal professional effectively select an expert for the purpose of accuracy and efficiency:

1. **Forensic Psychiatrist:** A qualified mental health expert, a medical doctor, with three to four years of medical residency in the areas of psychiatry and/or forensic psychiatry.

   - **Best suited for:** clinical interviews with clients/patients, clinical diagnoses and psychopharmacological (Psych medications) treatment. Psychiatrists use clinical interview and medical/medication expertise in any given case. Diagnosis and treatment of psychiatric disorders (e.g., major depression, psychosis, and the related). Clinical interviews and psychiatric assessment usually take anywhere between .5?2 hours.

   - **Limitations:** not qualified and/or lack of training to administer and interpret neuropsychological and psychological assessments and evaluations. Report is based mostly on a clinical interview, professional opinion, and screeners (e.g., Mini Mental Status Exam).

2. **Forensic Neurologist:** A qualified medical expert, a medical doctor, expert on the nervous system, and diagnoses of neurological disorders. Three to four years of medical residency in the areas of neurology and/or forensics.

   - **Best suited for:** to rule out neurological disorders and impairments (e.g., seizures), clinical interviews with clients/patients, clinical diagnoses and treatment using clinical interview, neurological exams, and medical/medication expertise (neurological disorders medications; psychopharmacology).

   - **Limitations:** not qualified and/or lack of training to administer and interpret neuropsychological and psychological assessments. Report is based mostly on a clinical interview, professional opinion, and mental health screener (e.g., Mini Mental Status Exam). Clinical interview and examination time depends on type and number of neurological assessments conducted.

3. **Forensic Clinical Psychologist/Neuropsychologist:** A qualified mental health expert, a PhD or a PsyD professional who studies brain-behavior relationship and the field of mental health. Can be specialized in the area of neuropsychology (an intersect between psychology, medicine, and neuroscience), with two to three years of internship for pre- and post-PhD training in a specialized area (e.g., neuropsychology, psychotherapy, forensics, or mental health).

   - **Best suited for:** clinical interviews with clients/patients, testing and evaluation using psychological and neuropsychological batteries, clinical diagnoses and treatment is based on thorough psychological and neuropsychological assessments, analysis, and interpretations. Diagnosis and treatment (using psychotherapy) of psychiatric disorders (e.g., bipolar). A comprehensive evaluation might take anywhere between 2?10+ hours of assessments.

   - **Limitations:** inability to prescribe psychotropic medications (only the U.S. military and two states allow psychologists to prescribe medications: New Mexico and Louisiana).

4. **Licensed Professional Counselor (LPC)/Licensed Clinical Social Worker (LCSW):** Usually a master’s level professional, MS, MA, or a PhD in counseling or social work. A licensed professional counselor, LPC (or in some states, licensed clinical professional counselors? or licensed mental health counselors?), or a licensed clinical social worker, LCSW, is qualified to provide individual, marital, couple, family, and group counseling to clients.

   - **Best suited for:** Counseling, clinical interviews, clinical diagnoses, and treatment as related to psychotherapy. They focus on problem-solving, setting goals, and reaching those goals utilizing psychotherapeutic techniques.
Limitations: In most states, they are only suited for therapy but not diagnosing, assessing, or treating utilizing psychological, neuropsychological, or psychiatric tools and assessments unless under the supervision of a psychologist or neuropsychologist. They can use educational and social assessments. Inability to prescribe psychotropic medications.

Hence, based on the above information, a legal professional should do his or her best in selecting the right skills and abilities of a mental health professional?to better suite the case on hand. Here are some examples for clarity:

A. John is a 40-year-old Asian American male. He suffers cognitive decline and emotional disturbance since his moving vehicle accident six months ago. You, the legal expert, should do the following:

1. Request a *neurological* evaluation of your client to rule out any neurological disorders or impairments;

2. Request a *neuropsychological* evaluation of the client. Usually, neurologists refer their patients to neuropsychologists for assessment of neurocognitive impairments (e.g., dementia, Alzheimer’s, traumatic brain injury, and the related), and for a psychological assessment to establish a (baseline) or to distinguish which type of neurocognitive impairment the patient or client has, and its severity the impairment (neuropsychologists? reports will indicate if the damage is mild, moderate, severe, or profound)?and also to decide if the psychological prob­lems John seem to suffer are due to the accident or other reasons.

Here is another example:

B. James, a 35-year-old white male, was charged with Indecency with a Child. James was in special education classes K?12. The attorney requests a competency to stand trial, and an evaluation for his anger issues.

Well, in this case, you need to involve a psychologist to conduct a comprehensive psychological or neuropsychological evaluation, as well as a competency evaluation. In addition, if the defendant is on medications or has a psychiatric history (which will be determined by the psychological evaluation), you need to have a psychiatrist review the client’s medications and make recommendations. By doing so, you are able to get inside the ?black box? of the defendant and see light at the end of the tunnel, hopefully.

To the reader, a question might surface at the point: ?What is involved when psychologically assessing a client?? In psychological testing, the psychologist evaluates the following areas (Heilbrun, K, Marczyk, G. R., and Dematteo, D., 2002, Gregory, R. J. 2011):

1. Background of the client (educational, social, criminal, psychological, legal, and the related);
2. Observing and assessing behaviors;
3. Assessing the personality for psychopathology;
4. Assessing general intellect and mental abilities;
5. Assessing the overall psychological status of the client to rule out any mental, psychiatric, or learning disorders and impairments;
6. Producing a clear report of the findings.

Should a comprehensive neuropsychological assessment be conducted (strongly recommended to help the court and those involved see the full picture by getting into the black box), in addition to the above items, the following should also be assessed:

A. Comprehensive executive functioning assessment of the higher level executive skills (e.g.,
sequencing, reasoning, problem solving);
B. Attention and concentration;
C. Learning and memory;
D. Language;
E. Visual/spatial skills (e.g., perception);
F. Motor and sensory skills;
G. Mood and personality sensory skills.

What about malingering?

Malingering is a complicated subject that is at times and based on case in question of significant concern to legal professionals, the court, and to most forensic psychologists. The expert will determine if there is a mental illness, or a deceitfulness to accomplish secondary material gain, for example. Your expert witness must be skilled enough to recognize malingering.

A defendant, client, or a patient may be faking a mental illness or exaggerating the degree of the symptoms to avoid or escape prosecution or gain monetary benefits. A concern might rise during the evaluation process, or a legal professional might have a concern, or expect the malingering question to surface in the trial. If so, then the importance of a comprehensive assessment cannot be overstated which will include assessing the defendant for malingering as he or she is being psychologically evaluated.

Nevertheless, it must be noted that clinical interviews, and mere screeners, will not do the job. Cost is another factor that will minimize comprehensive evaluations and additional well-needed testing. Professional opinions can easily be discarded as personal opinions if not backed up and supported by the two aforementioned foundations: validity and reliability. For example, if the opposing attorney asks a psychiatrist the following: ?So, Dr. Akbar, your results of your psychiatric evaluation is based on your clinical interview and a mental exam screener?? Or: ?Isn?t that what you call a professional opinion?? ?Isn?t that limited since you have no data, no reliable or valid data to support your opinion?? The psychiatrist here failed to perform psychological evaluation or neuropsychological evaluation. At fault also is the attorney who failed to select the right mental health expert if he or she was seeking a comprehensive assessment backed up by data that is reliable and valid! Are the data, numbers, and results you have generated regarding a client suspected of malingering, for example, valid and reliable or are they just based on the expert?s opinion? professional or not?

This question is one of the most critical questions to ask your mental health expert during trial. This applies to almost any evaluation sought by the legal professional (e.g., risk of re-offending, sexual violence, substance abuse, anger and aggression, or future risk of violence). If you do your homework as a legal professional, you will make the right selection, and your expert witness will be knowledgeable, credible, confident, competent, and prepared to answer the toughest, most brilliant, or silliest of asked questions. They will be able to provide clear reports, opinions, insights, decisions, up-to-date jargon-free assessments, objective information, and conclusions that are valid and reliable, as well as directly addressing the issues at hand. They will offer information that will assist with the decision-making of the trier-of-fact, but not make that decision themselves (Darani, 2006; Holmes, R. 1990; Ramsland, 2009; Steel, J. 2010).

Conclusion

Forensic psychology is the intertwining of the law and psychology. This article discussed the process and rendered a guideline for how to select a mental health expert. One of the most important functions of a forensic mental health expert is to be able to come as close to the truth of answering the forensic question on hand as is professionally and knowledgeably possible to formulate psychological findings in a clear forensic report that is accurate, reliable, valid, ethical, acceptable, and understandable to all involved parties. It
involves the expert testimony of a forensic psychologist in a way the courts, legal professionals, and other non-mental health experts can appreciate and comprehend. Hence, for a forensic psychologist to be a credible and competent witness for the courts, he or she must first understand the law and the legal workings of the courtroom, how it relates to his or her field of expertise, and then produce reports that answer forensic questions on hand in a straight and forthcoming manner. However, equally important is the selection by the legal professional of the right expert for the case. A crucial and vital task for the misinformed or uninformed legal professional as he or she selects expert witnesses for the case on hand. The expert testimony of a mental health expert can impact the outcome of a case, greatly making the use of his or her expertise in a trial very important to the entire process.

References


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