

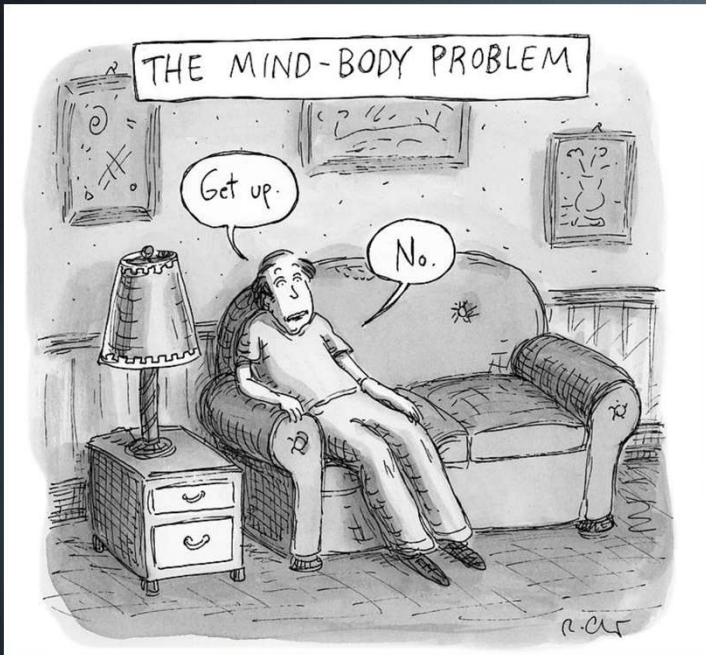
A Primer on Forensic Psychological Evaluations

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Psychologists



- ▶ Professionals with advanced degrees trained to study human behavior, emotions, and mental processes
- ▶ Unlike other mental health professionals, advanced training in assessment/testing
- ▶ Generally have a doctorate degree:
 - ▶ Ph.D.: Doctor of Philosophy in Psychology, Dissertation required
 - ▶ Psy.D.: Doctor of Psychology No dissertation
 - ▶ 4-7 years post-college education
 - ▶ Full-year internship
 - ▶ Usually a postdoctoral fellowship

Mental Health Experts

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- ▶ Psychologists
 - ▶ Psychiatrists
 - ▶ Licensed Mental Health Counselors
 - ▶ Social Workers
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- ▶ But even among psychologists...
 - ▶ Clinical, counseling, school, neuropsychology, industrial, social...



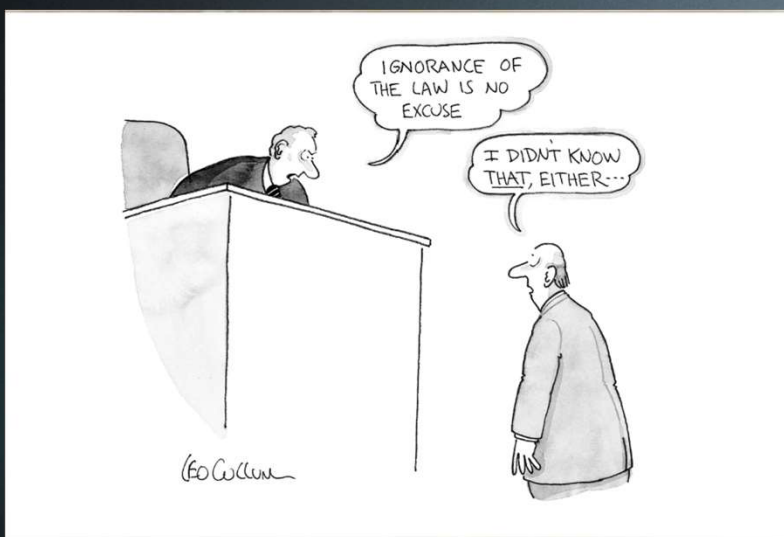
Forensic Psychologists

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- ▶ Focused work in legal proceedings
- ▶ Should have specialized training
 - ▶ Look for an internship and/or fellowship training in forensic psychology
 - ▶ Board certification in forensic psychology by the American Board of Professional Psychology (ABPP):
 - ▶ Directory listing: <https://members.aafpforensic.org/>
 - ▶ Experience: criminal, civil (e.g., child custody, IME, personal injury)
 - ▶ Psychologist-attorneys are uniquely qualified because they best understand the legal aspects of the psycho-legal question

Vetting a Potential Forensic Assessment

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- ▶ First, what is the forensic question at hand?
- ▶ What are the applicable statutory criteria?
- ▶ What does the law actually say?
 - ▶ Example: In a competency to stand trial evaluation, *Dusky v. U.S.* is not controlling. For federal cases, it is 18 U.S. C. § 4241; states vary.
 - ▶ In federal criminal cases, ultimate opinions on mental states for elements are disallowed (FRE 704(b)).
 - ▶ Diminished capacity is *narrower* than insanity (see, *States v. Pohlot*, 827 F.2d 889 (3d Cir. 1987)).

Spotting Potential Problems

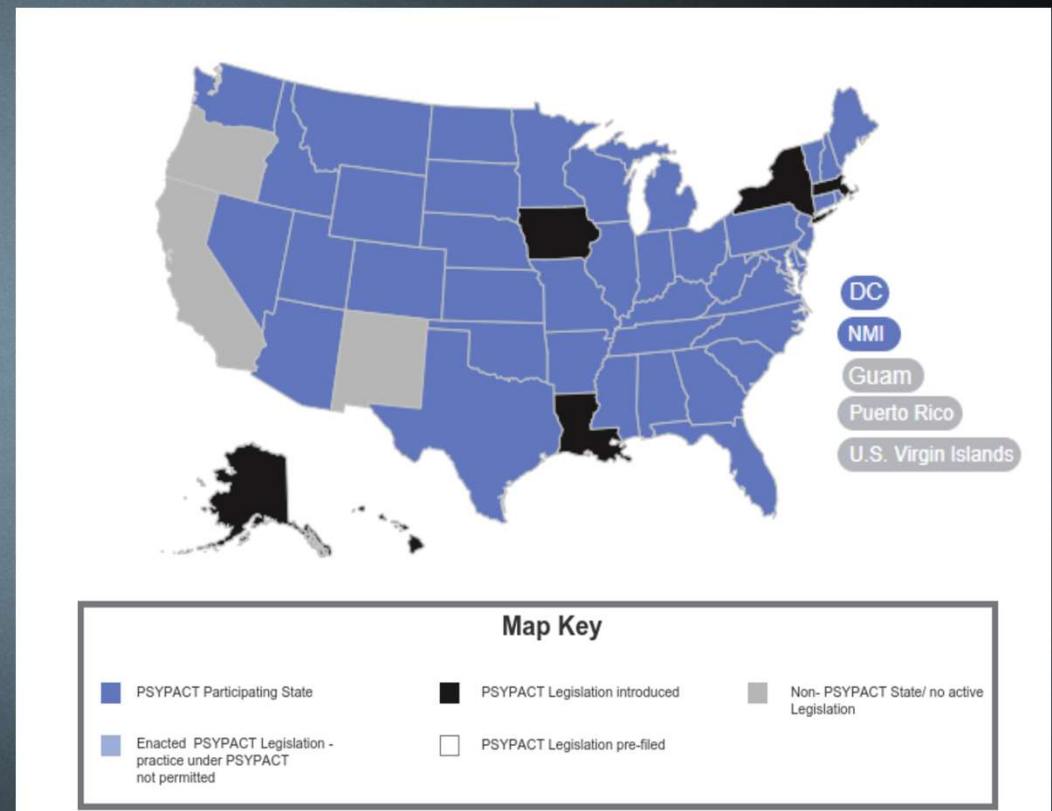
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- ▶ No one is an expert in everything
- ▶ Rather than asking how often an expert has worked on certain cases, ask what types of cases the expert has worked on recently
- ▶ Be careful with experts who are clinicians/therapists
 - ▶ Many clinicians dabble in forensics for money but have minimal training
- ▶ Beware of big font resumes or those that list CE trainings
- ▶ Ask whether the psychologist will personally perform testing
- ▶ Licensure issues:
 - ▶ Where the evaluation will occur (i.e., federal enclaves v. state property)
 - ▶ Where testimony might occur

The New Virtual World

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- ▶ PSYPACT credentials:
 - ▶ Authority to Practice Interjurisdictional Telepsychology (APIT)
 - ▶ Temporary Authorization to Practice (TAP)
- ▶ Pros/Cons:
 - ▶ Access to more experts
 - ▶ Cheaper
 - ▶ But unfamiliar with local expectations, rapport and observations are more limited, and restricted testing options



Discussing the Potential Case

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- ▶ Rather than asking for a “psychological evaluation”
 - ▶ Describe the facts and allegations of the case
 - ▶ Concerns you have about your client
 - ▶ Describe your interactions with your client
 - ▶ Explicitly discuss the objectives (and what you want to avoid)
 - ▶ If a particular mental disorder is at issue, mention it by name (records v. observations)
 - ▶ Describe the discovery materials available
 - ▶ Mention whether your client is in custody and where and whether preclearance is needed
 - ▶ Identify deadlines and ask about turnaround time
 - ▶ Complimentary consultation of the other expert’s report

Optimizing the Relationship

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- ▶ The more discovery (usually) the better
- ▶ Minimum for most cases:
 - ▶ Indictment, police records, mental health records, official copy of criminal history, interrogation videos or transcripts, past and current presentence investigation reports
 - ▶ Less helpful: search warrant applications, internet/telephone subscriber info, reference letters, certificates of jailhouse achievements
- ▶ Send electronic copies
- ▶ Provide statutory criteria, guidelines, and (sometimes) relevant case law
- ▶ Provide collateral contact information and indicate your preference
- ▶ Provide paralegal contact information in an email
- ▶ Prefer a consult before a report? Ask beforehand

The Nuts and Bolts

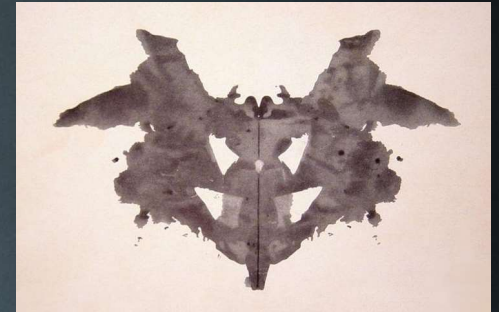
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- ▶ Broad overview:
 - ▶ Review discovery materials
 - ▶ Interview with the client
 - ▶ Formulation: The University of Rochester 1/3 rule
 - ▶ Report writing
 - ▶ Presentation of the report to the attorney
 - ▶ Consultation
 - ▶ Testimony if necessary
 - ▶ Notification of outcome/ feedback

Psychological Tests

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- ▶ As a general matter, psychological tests provide modest insights
- ▶ Categories:
 - ▶ Those developed for the general population: personality measures and cognitive tests
 - ▶ Examples: MMPI-3, PAI, MCMI, WAIS-V, WISC-V, TSI-2
 - ▶ Forensic-specific measures
 - ▶ Examples: PCL-R, Static-99R, CPORT, SIRS-2, SVR-20, RSTI
 - ▶ Red flags: Any projective measures: TAT, HTP, Rorschach
 - ▶ Test “dumping” – lots of tests can be a red flag
 - ▶ “Just another piece of data” ignores that bad data *decreases* incremental validity



Basic Principles of Psychological Testing

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- ▶ Reliability: Does the test provide consistent results?
 - ▶ Test-retest, Interrater, Internal consistency
- ▶ Validity: Do the results reflect the actual concept being measured?
 - ▶ *Construct Validity*: Ensures a test measures the intended theoretical concept or trait.
 - ▶ Convergent Validity: The test correlates with other tests that measure the same construct.
 - ▶ Discriminant Validity: The test does *not* correlate with measures of different constructs.
 - ▶ *Criterion-Related Validity*: How well a test correlates with a specific outcome.
 - ▶ Predictive Validity: How well the test predicts future performance or behavior.

Nomothetic Tests v. Structured Professional Judgment

- ▶ Nomothetic tests: Quantitative assessments used to measure traits, behavior, etc.
 - ▶ Advantages: High reliability and objectivity, superior predictive ability, consistency
 - ▶ Disadvantages: Lack of individuation, assumes that the criterion applies to all
- ▶ Structured Professional Judgement measures: A method of examining traits and behaviors using known variables
 - ▶ Advantages: Allows for individual context, amenable to dynamic factors, can (cautiously) be used with unusual populations (e.g., females charged with sex offenses)
 - ▶ Disadvantages: Subjectivity, bias, no cut scores

Sexual Deviance as an Example

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- ▶ The best theory of sexual offending is the Motivation-Facilitation Model
 - ▶ Sexual deviance = motive
 - ▶ Disinhibition, personality, substance abuse = facilitate the behavior
- ▶ In addition to looking at past behavior, how might we determine sexual deviance?
 - ▶ Inventory measures (e.g., MIDSA): Ask people about their interests and practices
 - ▶ Penile Plethysmography (PPG): Measures changes in penile circumference to assess arousal to specific stimuli
 - ▶ Viewing Time Measures (Able Assessment of Sexual Interests, Affinity)

Problems...

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- ▶ Inventories: face validity issues and research shows people underestimate the frequency of behaviors under scrutiny
- ▶ PPG: lack of standardization, assumes arousal equals interest
- ▶ Able Assessment:
 - ▶ Assumes time spent equals interest in a meaningful way
 - ▶ "[i]n short, of what the formulas applied by Abel consist, how they were derived, and whether they have ever been subjected to analysis or testing goes utterly unmentioned... For all we know, they and their components could be mathematically based, founded upon indisputable empirical research, or simply the magic of young Harry Potters' mixing potions at the Hogwarts School of Witchcraft and Wizardry."
 - ▶ In the Interests of CDK, 64 S.W.3d 679, 683-84 (Tex. 2002)

Part of a Larger Issue

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- ▶ **APA Ethics Code:**

- ▶ **9.02 Use of Assessments**

- (a) Psychologists administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

- ▶ (b) Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, *psychologists describe the strengths and limitations of test results and interpretation* (emphasis added).

Test Security: An Internecine Debate

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- ▶ The American Academy of Clinical Neuropsychology and the National Academy of Neuropsychology have taken a strong position that disclosure of test materials and data to non-psychologists is unethical
 - ▶ Including third-party observers, audio and/or video recording, disclosure of test data and manuals even under a protective court order, advanced notice to examinees of test names, description of test instructions or scoring methods.
- ▶ The American Academy of Forensic Psychology instead emphasizes that psychologists should make “reasonable efforts” to ensure test security but defer to court orders and contractual obligations
- ▶ APA’s ethics code is under revision and may adopt a position placing ethics at odds with possible legal demands for disclosure

Nondelegation Doctrine Challenges

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- ▶ The claim is that regulatory bodies' adoption of private entities' codes governing licensee conduct is unconstitutional under Article II, sec 1 of the Commonwealth's constitution
 - ▶ See, e.g., *Sheaer v. Ford*, 93 MAP 2016 (2018) (Wecht, D., dissenting); *Fremont v. Bureau of Prof'l & Occupational Affairs*, 897 A.2d 524 (Pa. Commw. Ct. 2006) (noting but not deciding); *Protz v. Workers' Comp. Appeal Board*, 161 A.3d 827 (Pa. 2017) (disallowing AMA guidelines for disability claims).
- ▶ Indeed, psychology boards do incorporate by reference (and generally defer) to private entities regarding such matters
- ▶ The PA board has been waiting for over a decade for APA to revise its ethics code

How to Examine the Expert's Report

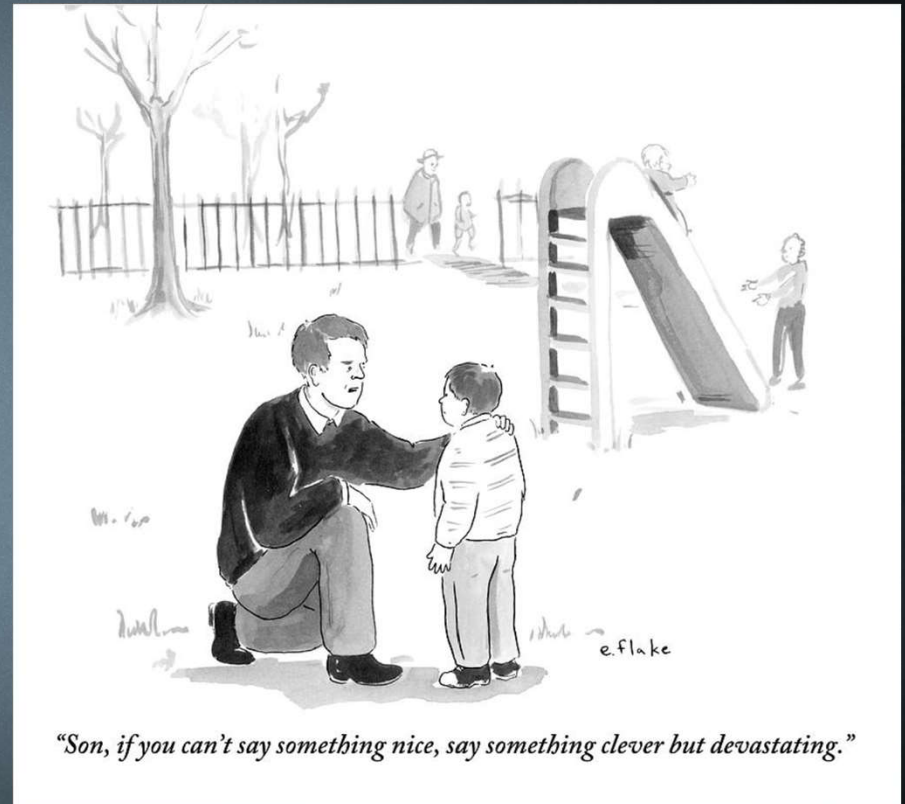
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- ▶ Sources of information must be listed
 - ▶ Specialty Guidelines for Forensic Psychology §11.03 require it
 - ▶ Multiple sources of data are the norm
- ▶ Informed consent documented
 - ▶ Guidelines require it even if mental competency is at issue
- ▶ If a person is not interviewed:
 - ▶ “When it is not possible or feasible to examine individuals about whom they are offering an opinion, forensic practitioners strive to make clear the impact of such limitations on the reliability and validity of their professional products, opinions, or testimony” (§9.03).

From A... to Opinions

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- ▶ Are the “facts” established in the report identified with the sources?
- ▶ If a diagnosis is provided, are the elements described? And applied to the person?
- ▶ Is the conclusion supported solely by the test results?
- ▶ If applicable, are the statutory criteria quoted and applied correctly?
- ▶ Do the conclusions follow from the scope of the referral question?
- ▶ Is it sensible?
- ▶ If ultimate opinions are precluded, is that respected?



Dealing with Bad Reports

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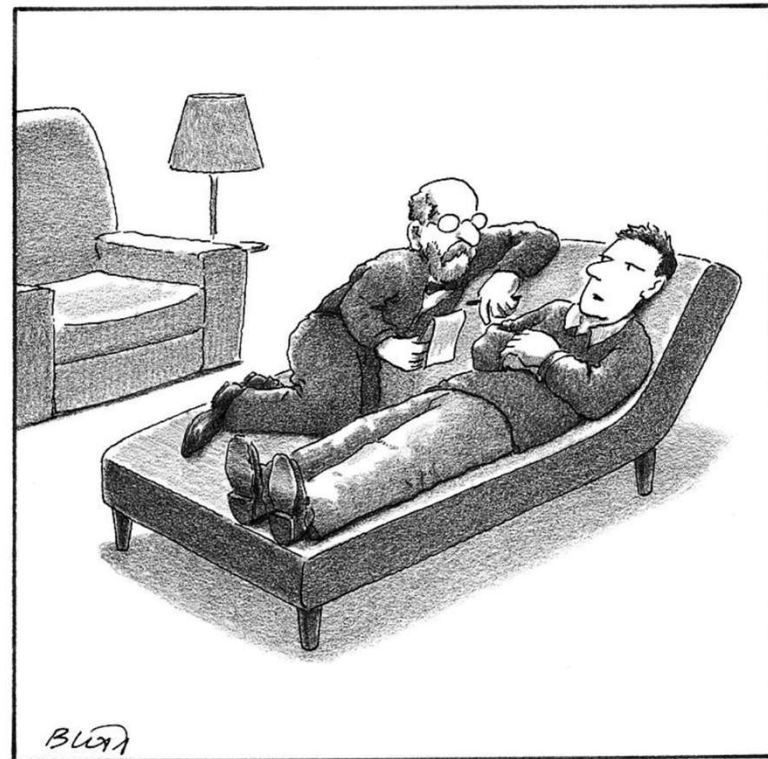
- ▶ In a retained matter, it is acceptable to ask:
 - ▶ For the report to discuss certain aspects of an examinee's life in more detail
 - ▶ For more collateral contacts to be made and included
 - ▶ Clarifying text added about tests
 - ▶ Why a test was included and scored
 - ▶ Giving feedback
- ▶ What cannot (or should not) be done:
 - ▶ Omissions of test results or other data

Last Words

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- ▶ At the end of the day, you should have confidence in your expert
- ▶ Communication is key; we speak different languages, so to speak

Inquiries are always welcome:
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"Well, right now I'm feeling a little uncomfortable."