

**Revisiting the Future of Forensic Psychological Assessment:
A 20-Year Check-Up**

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**Upon Receiving the Beth Clark Award by AAFP
March 20, 2010**

It is a privilege to be asked to contribute to an event that honors Beth Clark. Beth's career was a model of dedication to excellence in the field of forensic psychology. Her contributions were broad, including practice, scholarship, and involvement in APA's collaboration with the ABA on continuing education. She provided extraordinary service to the field through COLI, leadership in the American Academy of Forensic Psychology, and professional contributions to her state psychological association. Her everyday impact on those around her was even more important. This event honors her and her dedication to the field.

Perhaps this explains the theme that has been set by previous Beth Clark awardees, Alan Goldstein and Kirk Heilbrun. They talked about what is needed to press forward the field of forensic psychology. Kirk Heilbrun, for example, offered a comprehensive plan for what we need to do over the next decade to advance the field. Kirk has recently worked his presentation into an article that will appear soon in the journal *Psychology, Public Policy and Law*.

For my own part, I wanted to stay within the theme that the two former awardees established, but with a bit of a twist. Three twists, actually. First, I'm going to begin historically, revisiting our past and reviewing the past two decades that were at one time the future. Second, I'm going to say everything I want to say in about 20 minutes. And after that, I'm going to invite you to participate in the event. I'm going to ask you to describe what you believe are the most important things forensic psychology should be doing in the next few years to sustain and advance the evolution of forensic psychology. So while you are listening, let that question be in the background.

An Old Article

A little more than 20 years ago I wrote an article—published in the *American Psychologist* in 1987—entitled “The Economic and Scientific Future of Forensic Psychological Assessment. It catalogued what was wrong with the field at that time and our reasons to worry about how the field would develop. And of course it offered some recommendations for how we could guide the field toward a better future.

The article began with a quote I'd found in a legal case two years earlier. The case was *U.S. v. Downing* (1985), and it was about the admissibility of expert testimony by psychologists. In its written opinion, the court issued a sort of warning, in somewhat ominous overtones, regarding (quote) "the spectre of the creation of a cottage industry of forensic psychologists."

Now, there are three things interesting about that quote. The first was the choice of the term "cottage industry." Dictionaries define that as a small-scale business run out of one's home—not really a business, just acting like one. Notice also that they chose the term "industry"—not a science, not a helping profession—a greedy little up-start industry.

Second, the court referred to the "spectre" of a field called forensic psychology. A spectre—dictionary definition—is "a threatening or haunting possibility." Something to be feared! What if these forensic psychologists actually began to get organized?

Third, the court referred to the "creation" of such an enterprise. Obviously, in their eyes, forensic psychology did not yet really exist as a recognized party in the legal process.

The Field

However odd, this description had some reality. There weren't many of us, and we were only loosely affiliated. We certainly didn't have much guidance for our work. In the article, I listed the 8 textbooks that existed, devoted entirely or substantially to forensic assessments and testimony. All of them had been published in just the two years preceding this article. That's how new the field was. My book *Evaluating Competencies* had just been published the year before, and that very year, 1987, was the publication date of the first edition of Melton et al's now classic *Psychological Evaluations for the Courts*. Neither book was yet generally known to the field.

In 1987, APLS had been an APA division for only a few years, and only a couple of forensic clinical psychologists had been APLS presidents since it began 18 years earlier. There were no specialty ethical guidelines for forensic practice, and there were only a couple of forensic psychological tools, both brand new. The term "psycholegal assessment" had just been invented by Elwork and Sales, and I had coined the term "forensic assessment instruments" a year before this article. The term "forensic psychological assessment" in the title of my article was not yet in common use. In the years before 1990, there wasn't much guidance in our journals, either. For example, the issues of *Law and Human Behavior* in 1986-87 had 1 forensic research article for every 20 legal psychology articles.

So most forensic psychologists were operating on their own notion of what they thought was appropriate, with little guidance and with little sense of identity with a field. It was a "cottage industry." That's not to say that our numbers were actually small. The number of psychologists in court

had been growing since the 1960s, and there were about 100 ABFP diplomates by that time. So there was a “haunting possibility” that we were on the move. Moreover, many of us were excited about our potential to shape the development of a new field of forensic clinical practice.

The Problem

But as I explained in the article’s Introduction, the cottage industry had some big problems. Specifically, it seemed to me that forensic psychological evaluations of the day typically were neither “forensic” nor “psychological.”

They were not “forensic,” because too often they were simply clinical evaluations that moved inferentially from diagnosis straight to forensic opinion. For many psychologists in court, psychosis was *per se* evidence of incompetence or criminal non-responsibility.

They were not particularly “psychological,” in that too often they used very much the same non-standardized interview methods as psychiatrists’ forensic evaluations. Often they reached their conclusions without any reference to psychology itself as a basis for their logic or validity, and without any known research-based support.

And we weren’t particularly honest about it. The latest landmark cases—just a year or two before my article—were *Ake v. Oklahoma* and *Ford v. Wainwright*. The APA amicus briefs in those cases claimed that psychologists’ tests elevated the quality of their assessments above those of psychiatrists. But in my article, I observed that APA’s claim was largely unsupported. Our methods were not endorsed by empirical studies.

This was terribly frustrating to those of us who thought that psychology could do better. Psychology was rich in theories of cognition, perception, personality and clinical abnormality. We had the potential to develop a field of forensic assessment based on research evidence for its validity. The science of psychology could make forensic psychological assessment not only different, but better.

The Need

So how could we do it? I suggested that this required model-building and research of three types.

First, we needed psycholegal conceptual models to replace our traditional clinical models for structuring the forensic assessment process. I had just finished identifying a five-part structure for all legal competencies. I was hoping that we could do the same with other legal questions.

Second, we needed research to translate psychological knowledge for forensic application. Apart from clinical psychopathology, not much of this had been done. Some efforts had been made to translate developmental psychological principles for certain legal questions. But little had been done to

translate social psychological principles and personality dimensions. In 1987, even psychopathy hadn't yet achieved its spotlight in forensic psychology.

Finally, we needed to construct tools to measure psychological capacities, behaviors and abilities related to psycholegal factors. With measures, we could do research on our populations and eventually provide evidence for their validity. These special psycholegal tools would then make our assessments more objective.

And that's where my worries began. I foresaw an incentive dilemma. This was the "economic" part of the article's title. I was thinking about forensic psychology in a business or marketing model. If forensic clinicians were going to have anything of value to sell, we needed to start generating research that would actually provide that empirical foundation and create the necessary tools. But researchers weren't going to do that unless they too had an economic reason. So we needed forensic psychologists who were willing to use that research in order to provide the incentive for researchers to provide us with innovations for practice.

But apparently I didn't have much faith in my fellow forensic psychologists at that time. I claimed that too many of them were comfortable with their old clinical tools and making inferential leaps to the forensic questions. They were entrenched in old public hospital systems where newer methods were less likely to be adopted. And they didn't have an incentive to change, as long as the legal system accepted their current practice.

Elizabeth Loftus had recently asserted that all would be well if we simply relied on "social engineering" to create a "survival of the fittest." Clinicians who used better methods would be more sought after by attorneys, thus forcing a positive evolution of the field. But my concern was that the law itself would not reward clinicians for adopting newer, empirically-based methods. I feared that (quote) "the fittest who survive may not be those who represent the best that psychology has to offer," if the legal system is simply interested in an expert's opinion, rather than its scientific basis.

In my view, judges were too often concerned simply with experts' conformity to minimal legal requirements. Their attention to legal precedent—that is, relying on already-established notions of adequate evidence—would produce a disincentive for forensic clinicians to endure the uncertainty of trying new methods. And if the marketplace incentives didn't stimulate them to try new methods, who could expect the researchers to want to supply them with the empirical base that could rescue forensic psychology?

Something had to be done to get a flow of interaction between research and practice in forensic psychology, and to influence the courts so that they wouldn't tolerate the current status quo in forensic

psychology. Otherwise, forensic psychology at worst would experience a premature death, or at best would evolve in a state of mediocrity.

The Remedies

So I proposed three remedies.

First, I suggested that somehow the field needed to create incentives for researchers to do research that would be of forensic interest. Every good industry—at least if it's more than a cottage industry—needs a research and development office to create and improve its products. That's what we needed. You have to remember that at that time, research in law and psychology had little to do with forensic clinical practice. It was all about eyewitness identification and jury selection. Of all the articles in the 1986-87 copies of LHB, only 5-10% pertained to clinical forensic questions. So the type and volume of research that we needed was nowhere in sight. I suggested that APA 41 and ABFP should organize groups of social scientists and applied forensic psychologists to develop research agendas, disseminate them, and stimulate researchers' interests in the kind of research that we needed. I am not sure that we ever did anything systematic of that nature. But as I'll point out later, apparently it wasn't necessary.

Second, I suggested that we needed a set of standards for forensic psychological practice. It was unlikely that practice would improve until we had published standards to which to hold clinicians' feet to the fire. In fact, this was so important that within a year several of us had decided to create an APLS/ABFP working group to develop the first set of ethical standards, which of course in 1991 became our current ethical guidelines for forensic psychologists.

The third suggestion was for states to set up required certification programs for public sector forensic clinicians, applying a new higher standard. Legal professionals in those states could be educated at the same time. This would raise the threshold of acceptable practice. Any private practitioners who couldn't meet those standards would look bad on voir dire, then would get less work, and therefore would be forced to shape up. We could also provide more workshops for private practicing forensic clinicians, to give them the information they needed to keep up.

The next 10 years saw these educational ideas begin to happen. In the 1990s, many states established minimum standards for their forensic MH professionals in inpatient and court clinic settings, as well as continuing education offerings. Under Alan Goldstein's leadership, beginning in 1988, AAFP's workshops became one of our most important tools for improving practice. APA did its part in creating joint APA/ABA conferences. APLS sponsored the Villanova Conference in the mid 1990s, chaired by Don Bersoff, crystallizing our training models. There is no doubt that we have made

important and significant advances in teaching our forensic and legal colleagues what we do and what they should expect of any forensic psychologist who provides information for the courts.

State of the Field

Did our efforts to incentivize research, set standards, and force improvement through education of the legal consumer make a difference? In a world with so many uncontrolled variables, one never knows whether one's actions were necessarily responsible for subsequent history. But there is no doubt that the 1990s saw an enormous surge in research to inform forensic psychology. It simply began to blossom.

As noted earlier, in 1986-87, about 5-10% of LHB research articles pertained to clinical forensic issues, compared to about 90% on legal psychology research. But by 1995, that had changed so that about 45% of articles in LHB were forensic, and by 2005-2007 it was about 60%. Suddenly we had a growing literature on psychopathy, a second and third generation of risk research and tools, and research on civil competencies. And in the late 1990s came a huge surge in research on juvenile forensic matters. An outpouring of forensic psychological tests were developed, validated and published—enough to create new “forensic” sections of commercial test catalogues.

We were fortunate that several sources of financial support for forensic research arose. Soon after my article, the MacArthur Foundation became a major funder of mental health law research, and later juvenile forensic research as well. NIMH and NIJ have never been too keen on funding the development of forensic methods, but they were extraordinarily important in funding the research that backs up our forensic inferences—especially in the areas of violence, recidivism, and mental health issues.

In retrospect, therefore, I simply may have over-worried. Apparently the field was already poised and ready to go, and I just hadn't seen the evidence yet. But I'm not sure it would have happened if many of us in forensic practice had not campaigned to establish some solid standards, called for a more empirical basis for our evaluations, and educated our colleagues and the courts regarding the importance of using the research in practice.

So, here we are a little more than 20 years later. The cottage industry is thriving. Forensic psychology has been an APA specialty for over 10 years, and soon it will be accrediting our post-doctoral forensic training programs. We have scores and scores of forensic textbooks on general and specific topics. There are about 30 journals that report theoretical and empirical research on forensic clinical questions. Most good forensic examiners have a dozen or more specialized, validated psycholegal

instruments in their testing cabinet for use with everything from CST to CR to Miranda to malingering, as well as risk assessments and child custody questions.

We will soon have a second edition of ethical standards for forensic practice, and the three Beth Clark Award recipients have completed their editing for about two-thirds of the 19 best-practice volumes we are doing for Oxford Press and AAFP. Overall, I believe that we have a pretty good consensus in ABFP regarding the essentials of good forensic practice generally, as well as in specific areas of forensic assessment. We have well-trained and enormously bright graduate students aplenty who are coming into the field, providing new ideas, new research, and new leadership for the future.

I really did not foresee the success of forensic psychology when I wrote that article in 1987. Perhaps I saw the direction we were going, in terms of a more empirical base for our evaluations. But I was quite uncertain that it would develop, and I certainly did not anticipate many of our specific advances.

The Future

Now, what about the next 20 years? First let me urge you to watch for the article that Kirk and his colleague have in press, in PPPL. A few years ago, the American Academy of Sciences commissioned a committee to review the state of the field in Forensic Sciences. This Forensic Science Committee did not review forensic psychiatry or psychology. But it did produce a set of guidelines for future work to improve the forensic sciences generally. What Kirk Heilbrun has done in his forthcoming article is to take those guidelines and adapt them for application to the task of improving the future of forensic psychology. It produces some excellent ideas.

But I am not going to review them. Instead, I thought it would be more interesting to open up this presentation to your participation. Let me ask you what you believe we need to be doing to improve forensic psychology's evolution over the next 20 years.

At this point, the audience was invited to offer their suggestions for the most important things that we needed to do to advance education in forensic psychology, then research, and finally practice. The responses are offered below without attribution. In some cases suggestions have been merged when they were similar. At the end of each of the three topics, Dr. Grisso offered his own suggestion.

Education

- Develop educational efforts to bridge the cultural and linguistic gulfs between forensic mental health examiners and examinees in forensic populations
- Seek improvement in funding of forensic post-doctoral and internship programs; trainees interest in forensic psychology increases, but fiscal problems threaten decrease in their opportunities for advanced training

- Facilitate a “mentoring system” for practicing professionals; go beyond workshops (providing information) to connect senior forensic clinicians with practitioners to help them develop forensic skills in practice
- Re-consider the balance of “depth” and “breadth” in forensic training
- (Grisso) Use the internet to better educate the public regarding what forensic psychologists do and how they do it; current internet descriptions are simplistic, inaccurate, or focused on commercial interests of certain universities

Research

- Increase the communications and research connections between forensic psychology and criminology
- Promote involvement of lawyers, judges and clinical practitioners in the early phases of forensic research projects, so that the products (designed to improve practice) are in part designed by the users
- Do research to promote greater attention of forensic psychologists to “psychology of law” (the way that law seeks to control behavior). How can forensic psychologists play a role in promoting social justice and change? Is forensic psychology more than merely performing assessments to assist courts in a case?
- Discover ways to re-interpret “forensic assessment research questions” so that they better fit the portfolios of grant agencies that do not typically fund forensic method development
- Increase research on performance of our assessment tools in the field (beyond the lab)
- (Grisso) Consistent with the previous bullet, increase attention to studying what forensic psychologists actually do and how they actually perform (“effectiveness”), not just the validity of their methods (“efficacy”)

Practice Standards

- Clarify the differences between forensic psychology as a professional specialty and non-forensic psychologists’ applications of psychology in forensic settings
- Develop “best –practice” documents, authorized and approved by APLS, focused on specific types of forensic evaluations
- Avoid being complaisant at a time when things are going fairly well for forensic psychology; it could be dangerous not to see our faults or ways in which we can improve

- (Grisso) Create a more dynamic model than “one-time certification” for developing advanced practice in forensic psychology; for example, develop a “performance-based standards” project whereby forensic clinicians (or group forensic practices) commit to specific annual goals that aspire to best practice standards, then measure and report on their own annual progress

The author thanks Kirk Heilbrun and Alan Goldstein for their comments on a draft of this speech, and Laura Guy for capturing the responses of the participants during the event. Special thanks also to Phil Witt, President of AAFP, who presented this award to me 35 years after we first met at Saint Louis University when I was a new faculty member and he was finishing his doctoral training.