FORENSIC INTERVIEWING IN CRIMINAL COURT MATTERS

FORENSIC INTERVIEWING IN CRIMINAL COURT MATTERS

A Guide for Clinicians

By

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and

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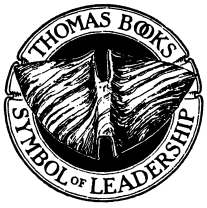

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PREFACE

Although forensic psychology continues to develop at a rapid pace, it is no longer accurate to describe it as a burgeoning field. Forensic psychology has become the dominant paradigm in forensic mental health. Psychology informs all forensic mental health activities and the courts have become increasingly reluctant to accept forensic opinions that are not informed by psychological testing and anchored in science–most of which is the product of psychologists. Forensic mental health assessment, in particular, has essentially become synonymous with forensic psychological assessment.

While we embrace these developments–particularly the move away from the unbridled clinical opinions that have historically marred the practice of forensic mental health–we have concern that the individual is being lost in the avalanche of nomothetic data generated by the large scale group research designs favored by psychologists. We fear, in short, that the necessary shift toward empirically grounded procedures is being accompanied by an unnecessary tendency to dismiss individual differences as unimportant (see for example Serin et al., 2011). An unfortunate byproduct of this shift in perspective is that the importance of the clinical interview has diminished in favor of procedures biased in the direction of rigid structure and statistical formulas. Interviewing continues to occur, but it is often a perfunctory, poorly planned activity conducted in the service of preconceived notions drawn from increasingly large studies of offenders.

In contrast, our approach to forensic mental health places the individual front and center in the assessment process. We always begin with the assumption that the interviewee is a unique individual who brings unique characteristic to the interview. To be sure, our inquiries often produce results that converge on the portrait of the "average offender" that is commonly described in the nomothetic literature. This average offender does indeed exist. However, we never begin with the assumption that the interviewee is an average sexual offender or an average violent offender or an average anything. To do so is, in our opinion, akin to wearing blinders. The need to treat

the interviewee as an individual rather than a member of some statistically defined group is a recurring theme in this book.

As much as possible, this book is focused on the interview proper. Issues related to the broader topic of forensic assessment are discussed as necessary to provide context. Although the issues we discuss apply equally in civil and family court settings, we have chosen to focus on the criminal justice system. To avoid redundancy with the many excellent texts on the interviewing of child witnesses, we have also chosen to omit discussion of this topic in our book.

This is not a "how-to" book in the sense that we provide scripted interview questions. Although we occasionally identify specific questions, we focus primarily on the interview process and on general areas of inquiry. Forensic interviewing necessarily requires basic clinical interviewing skills and we assume that our readers possess these skills. We also assume that our readers possess a basic understanding of psychopathology. Effective forensic interviewing is not possible absent this knowledge.

The book is organized into three sections: (1) general issues, (2) specific applications, and (3) special populations. The first chapter introduces the forensic interview as a process that is distinct from its more common relative, the clinical interview. Chapter 1 provides a conceptual foundation for the remainder of the book by comparing and contrasting clinical and forensic interview strategies. Basic issues such as the use of structured interviews and the very important need to secure a clear referral question *before* examining a forensic patient are also touched on in Chapter 1.

While the latter is a requirement that applies in both clinical and forensic settings, the structure provided by a clear referral question is doubly important in a forensic setting where boundary issues are amplified by the adversarial nature of court proceedings and by legal rights that do not necessarily apply in clinical settings. Very clear parameters of inquiry are associated with, for example, an assessment of adjudicative competence. Yet, in our experience, it is not uncommon for a naive or poorly informed interviewer to trample across boundary lines by canvassing legally irrelevant issues. A clearly worded referral question, coupled with a sound understanding of relevant legal issues, provides an effective barrier against these sorts of boundary violations. This is not to say that boundary issues are unimportant in clinical settings. Rather, we simply wish to make the point that forensic inquiries should be more narrowly focused than clinical inquiries and that a specific referral question helps sharpen the focus of the forensic interviewer.

Chapter 2 introduces the concept of idiographic model construction that is central to our approach to interviewing. This chapter also includes a description of the iterative, funnel-shaped approach to interviewing that we employ, along with a discussion of common pre-interview activities that we find helpful.

Chapter 3 addresses the thorny issues of malingering and response bias. Here we make the case that the relatively lax approach to response bias that is characteristic of clinical work must be replaced with an unwavering acceptance that *every* forensic patient is motivated to manipulate the outcome of a mental health assessment. Although the competent assessment of malingering typically requires psychological testing, we focus on pertinent interview observations and identify testing resources for interested readers to pursue. It simply made little sense to repeat information that is widely available on the psychometric assessment of malingering. Section 1 closes with a discussion of practical considerations applicable to forensic interviews. Technical issues such as the presence of third-party observers and recording of interviews are discussed in this chapter.

In Section 2, we narrow our focus by discussing issues that are of particular interest in specific criminal justice settings. In a very general sense, most forensic evaluations tend to fall into one of three groups: (a) retrospective insanity offenses, (b) here & now adjudicative competency assessments, and (c) forward-looking predisposition assessments. Section 2 includes chapters devoted to interviewing for each of these assessments.

Our focus continues to narrow in Section 3 with discussion of more specific forensic groups. Thus, Section 3 includes chapters on interviewing sexual, violent, and adolescent offenders. We also include a chapter discussing third-party sources of information in forensic mental health evaluations. It is our hope that this more specific focus will complement information provided earlier to create a relatively comprehensive sourcebook for conducting forensic interviews in criminal justice settings.

Many students, patients, teachers, and colleagues have directly or indirectly contributed to this project. We extend our sincere gratitude to these individuals. Our families also deserve our gratitude for their unwavering support and patience.

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Reference

Serin, R., Forth, A, Brown, S., Nunes, K., Bennel, C., & Pozzulo, J. (2011). *The psychology of criminal behavior: A Canadian perspective.* Toronto, Ontario: Pearson.

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Chapter 1

INTRODUCTION TO FORENSIC INTERVIEWING

Introduction

Recent years have witnessed impressive developments in assessment technologies and significant refinement of assessment procedures. The process for evaluating risk of violence, for example, has been refined to an extent that it bears very little resemblance to early occult procedures that relied exclusively on the unbridled opinions of psychiatrists or psychologists. Recent times have also seen very rapid developments in psychological testing technology so that clinicians working today enjoy a wealth of options when seeking well validated tests to serve the needs of their patients.

Despite these impressive gains, however, the interview remains the bedrock of most assessment procedures. Absent the case-specific context provided by interview data, for example, the interpretation of psychological test results is often reduced to a series of very general statements that say little about the patient being evaluated. Specific diagnostic conclusions are also more often than not impossible without information obtained directly from the patient and the evaluation of legal capacities (e.g., fitness for trial) is categorically impossible without conducting an interview. In short, the interview remains the indispensable foundation of most assessment activities (Droggin, 2007; Wiens, 1991).

All professional interviews are intended to produce a greater understanding of the subject. In a clinical setting, a doctor interviews a patient with the goal of understanding the source of his or her distress. The understanding that is gleaned from a clinical interview is then

reflected in a description of the patient's problems, followed by attempts to predict and control the course of illness. The description of a patient's problems will generally be framed as a formal diagnosis. In this context, prediction and control will, respectively, take the form of prognostic statements and interventions designed to alter the course of illness. In a forensic setting, the goals of prediction and control may, for example, manifest as statements about risk for re-offense and specific recommendations for managing risk. In either case, the interview is designed to produce data that help understand, describe, predict, and control some aspect of the patient's behavior (broadly defined to include signs and symptoms of psychopathology). The goals of description, understanding, prediction, and control are central to the scientific method (Evans, 1985).

This chapter opens with an overview of reliability and validity issues pertinent to the clinical interview. We then discuss the strengths and weaknesses associated with the various interview formats that are available to clinical and forensic practitioners and we highlight the features that distinguish clinical from forensic interviewing. Finally, we conclude this chapter with a discussion of the issue of privilege in forensic assessment and by emphasizing the importance of securing a clear referral question before beginning a forensic evaluation.

Psychometric Issues

A patient interview–whether it is conducted in a clinical or forensic setting–represents an application of the scientific method. This observation is implicit in the activities of all the major health care professions. As an example of applied science, the interview is subject to evaluation by scientific standards. Chiefly, these standards focus on issues of reliability and validity. Very broadly, reliability refers to the extent to which a measure (in this case, an interview) produces a consistent outcome. In a clinical setting, for instance, reliability can be measured by diagnostic consistency across interviewers of the same patient. More specifically, three doctors interviewing the same patient, for the same reason, under the same circumstances should reach similar diagnostic conclusions. If they do not, then their data collection process is, for some reason, unreliable. Validity, on the other hand, refers to the extent to which a metric actually measures what it purports to measure. A clinical interview that focuses exclusively on childhood

issues, for instance, would be an invalid measure of current mental status in an adult patient. A valid measure of mental status with this patient would focus heavily on how the patient currently feels, thinks, and acts.

As they relate to interviewing formats, the scientific concepts of reliability and validity include (a) test-retest reliability, (b) inter-rater reliability, (c) criterion validity, and (d) construct validity (Miller, 2003; Rogers, 2001). Inter-rater reliability simply refers to the level of agreement between interviewers who question the same interviewee. Recall the earlier example of three clinicians who interview the same patient. To the extent that they arrived at similar diagnostic conclusions, the interview format they employed would enjoy sound inter-rater reliability. Conversely, wildly different diagnostic conclusions by these three individuals would signal very poor inter-rater reliability.

Test-retest reliability is concerned with consistency of outcomes across interviews involving the same interviewer and interviewee. Thus, a clinician who interviews a particular patient would be expected to arrive at similar conclusions if she re-interviewed the patient after a brief interval. Significant discrepancies in this scenario would signal low test-retest reliability. As a general rule, test-retest reliability is negatively affected by two related variables: the passage of time and attenuation. Within the context of interviewing, attenuation refers to the common observation that patients tend to report fewer symptoms with each subsequent interview. In a forensic setting this observation appears to extend beyond simple symptom counts so that, absent careful attention to detail, each subsequent interviewer in a case tends to receive increasingly impoverished descriptions of, for example, developmental and offense histories. Ziskin (1995) has linked this observation to the psychological process of habituation.

To the extent that the passage of time is inevitably associated with change of some sort, lengthy intervals between interviews will reduce test-retest reliability. In the previous example, a lengthy interval between the first and second interview could allow for significant changes in the patient's symptom cluster or even a spontaneous remission of the illness that prompted the initial interview. These changes would logically lead to different conclusions and, as a result, test-retest reliability indices would decline.

Criterion validity includes both concurrent and predictive validity. Concurrent validity is simply a question of how closely the informa-

tion obtained from an interview corresponds with information obtained from a separate measure that seemingly covers the same areas and that has previously been validated. In other words, does the interview format being studied produce diagnostic information that is consistent with, for instance, the results of a well validated diagnostic test? If it does, then the interview is said to have sound concurrent validity. Predictive validity, on the other hand, is concerned with how well the results of a particular interview predict some variable of interest. In a clinical setting, this variable of interest is typically prognosis for a specific type of treatment. In a forensic setting, the variable of interest may be violent behavior. In both cases, some sort of a statement is made about the future based on information obtained from an interview.

Construct validity is defined as the degree to which a metric actually measures what it purports to measure. A weight scale, for example, would have very little construct validity as a measure of height. Similarly, a job satisfaction survey would have very little construct validity as a measure of fitness for trial in criminal court.

The reliability and validity of interviews are greatly affected by two sources of variance: criterion variance and information variance (Rogers, 2001). The former is concerned with the process of deciding when a specific standard has been met. In a clinical setting, for example, criterion variance can be related to a question of whether loss of appetite is indicative of depression or some more benign process. Information variance, on the other hand, is concerned with how information is collected and analyzed. More concretely, information variance in an interview refers to what questions are asked, how they are asked, and how the resulting information is organized to produce a final opinion. In a diagnostic setting, for example, information variance is concerned with what signs and symptoms of mental illness are reviewed and how the interview information is organized to arrive at a final diagnosis. As a general rule, increasing the structure of an interview will reduce the problem of variance.

Forensic evaluations are highly consequential in the sense that they carry the potential to permanently alter lives. They are also highly adversarial and they are subject to a degree of scrutiny that is uncommon in clinical settings. These characteristics increase the importance of using reliable and valid techniques. Forensic evaluations should always proceed on the assumption that all aspects of one's work will