

## CONTEXTUAL ANALYSIS OF PSYCHOLOGY OF LAW: IMPLICATION FOR NIGERIAN LEGAL SYSTEM

JUDE UCHE OKOYE

Nnamdi Azikiwe University - Nigeria

### *Abstract*

**T**his work examines the interrelatedness between psychology and law especially how psychological principles and concepts can be applied to law. The research findings carried out in the United States of America show how these principles and concepts in psychology is presently used and still will be used and expanded in the law courts for the proper determination of cases to meet the end of justice. A case is made for the use and applications of these psychological principles and concepts and more research work in the area, in the Nigerian legal system which is neglected and least developed and applied in our courts.

**Keywords:** Psychology of Law, Nigerian legal system, Determination of cases, Justice, Law court, Nigeria.

### INTRODUCTION

Simply put, anything that falls within the intersection of psychology and the legal system can be considered within the scope of psychology and the law. The imprecision of this definition allows for a very broad and ever expanding legal system (Bartol & Bartol, 1994). Traditionally, psychological research often seeks to address basic principles of human behaviour. Legal and forensic psychologists are forced to bridge the gap between laboratory and the court

room by the very nature of the applied topic they study. The real world application of psychology and the law has been identified at least since "Hugo Munsterberg" (1908) made grand claim regarding the promise that psychology held for the legal system nearly a century ago in his pioneering book on the witness stand. Some of the early researches in the United States were inspired by the real World events like the kidnapping of Charles Lindbergh's young child and subsequent trial of the alleged perpetrators (McGehee, 1937). Early psychological research was used before the United States Supreme Court's finding that public school segregation was unconstitutional (Brown V. Board of Education, 1954). One of the more published cases involving the use of psychological expertise in the court room occurred during the Harrisburg Seven Trial in the early 70's in the United States of America. In this politically charged case, Philip Berrigan and seven other men were on trial for a number of antiwar activities. A group of social scientists joined the defense team to offer their expertise to select a jury favourably to the defendants. The team of experts sought to identify a number of demographic characteristics (e.g. religion, age, gender, education) that will be related to a bias for convincing the defendants (Schulman, Shaver, Colman & Christie, 1973).

From these early ventures into the courtroom, psychology and law have experienced tremendous and rapid growth during the past 20 years in America. The essence of this paper is to agitate the minds of psychologists and legal persons in Nigeria to follow the American example for the development of law and justice in Nigeria through the use and application of psychological principles and research. The growth of the field in America is marked by the establishment of specialized journal (e.g. Behaviour Sciences and the Law, Criminal Justice and Behaviour, Law and Human. Behaviour and Psychology, Public Policy and the Law), increasing use of psychological testimony and the examination of psychological research in court cases (e.g. Lockhart V. Mccree, 1986), the establishment of professional organizations (e.g. American Association for Correctional Psychology, American Board of Forensic Psychologists, American Psychology-law society) and the creation of graduate training programs specifically in psychology and law. (See generally Bersoff et al, 1997, Melton et al 1998).

The sub-discipline of psychology concerned with the system has been referred to as psychology and law, forensic psychology, psychological studies, correctional psychology etc and its identity has been debated since its inception (Hess, 1996; Grisso, 1991). The diverse focus of the field has fueled much of a debate.

Traditionally, psychology and law is divided into a few discrete related areas (Bersoff, 1997). The more clinical aspects of psychology and law, forensic psychology, tend to cover areas such as psychological assessment, prediction and reduction of future dangerousness and interventions designed to rehabilitate criminal offenders. More experimental topics in psychology and law are most often based in the social, personality, cognitive or development areas

of psychology. Examples of these areas include Jury decision making, eyewitness identifications, the impact of court decisions, legislative action, and administrative conclusions on the beliefs and behaviour of society. The breath of psychology and law makes it impossible to identify and summarize all of the compelling research issues in the area. However, a cursory examination of several major topics in psychology and law provides a good starting point for students interested in the field as well as established professionals unfamiliar with the literature. This examination of general psychology and law research will focus on:

- the impact of evidentiary research;
- eyewitness identification and recall;
- Research in the treatment of forensic and special interest in forensic assessment.

#### **The Impact of Evidentiary Research**

A number of researches have investigated evidentiary aspects of the legal process. Many times the presentation of a piece of evidence in a particular manner or at a particular point in the trial may have profound impact upon the ultimate decision of the court. Researchers have examined the impact of expert witness across a broad range of case specific facts, the impact of out of court statements regarding a fact in question, the presentation of information on coerced confessions, evidence on statistical probabilities, and a number of mediums for the presentation of evidence (e.g. computer animation). Lawyers want to know how they can best persuade the court to believe in their client's innocence in a criminal trial or that their client has been wronged civilly. Psychological research is often able to lead some assistance with regard to the persuasiveness or impact of particular type of evidence.

The largest body of evidentiary psychological research has focused on the use of expert witness.

These research efforts are largely the result of the increasing demand for psychologists to testify on issues ranging from battered women syndrome to eye witness memory. The presentation of expert testimony can be an opportunity to re-educate the court about particular psychological phenomena that are beyond the everyday knowledge of the court (Blackman & Blackman, 1984). Much of the initial research centered on the impact of expert testimony to explain that relevant factors that influence eyewitness identification such as the relationship between eyewitness confidence and recall accuracy, the suggestibility of their memory, the presence of a weapon and the impact of different police line-up procedure. Additional efforts have examined the impact of expert testimony evidence focusing on battered women syndrome (Schuller, Smith & Olson, 1994), a defendant's insanity plea (Rogers et al., 1990), child sexual abuse (Crowley et al., 1994), rape trauma syndrome (Frazer & Borgida, 1992) and possible age discrimination (Raitz et al., 1990). Though some studies appear to suggest that the introduction of expert testimony is not always effective in specific cases (Kasian et al., 1993; Schuller & Hastings, 1996), studies have largely concluded that expert testimony can have a significant impact on the manner with which judges process the trial related information and their ultimate verdicts (Penrod & Cutler, 1987).

#### **Eyewitness Identification and Recall**

One of the most substantial bodies of research in psychology and law focuses on eyewitness memory or eyewitness identification. The scientific study of eyewitness memory has largely remained within the domain of psychology; and the general study of memory has been integral to the development of psychology as a science (Well, 1995). Eyewitness research primarily has focused on the victims of crime (i.e. Eyewitnesses) and the factors that influence

eyewitness performance. Many psycho-legal researchers argue that the quantity of research focusing on eyewitness identification is a direct result of the magnitude of the problem of wrongful convictions based on false eyewitness reports (Loftus, 1993).

#### **Research in the Treatment of Forensic and Correctional Offenders.**

Research in forensic psychology is often separate and distinct from the broad field of psychology and law. The American psychology - law society (1995) defines psychology as:

"The professional practice by psychologist within of the areas of clinical psychology, counseling psychology, neuropsychology and school psychology when they are engaged regularly as experts and represent themselves as such, in an activity primarily intended to provide psychological expertise to the judicial system"(p.15).

Issues in forensic psychology typically include appropriate interventions for criminal offenders, prediction of future dangerousness, issues surrounding competency and insanity, the feigning of mental illness (i.e. Malingering), civil commitment, juvenile delinquency, child abuse and neglect among others.

The criminal justice system attempts to balance its treatment of offenders between two primary objectives: punishment for prior bad acts and prevention of future bad acts (Harvard Law Review, 1996). Concern over increasing crime rates has polarized policy makers with some individuals proposing to reduce criminal recidivism through harsher criminal sanctions (e.g. McCorkle, 1993) and other persons calling for the use of mental health interventions to decrease criminal behaviour (e.g. Gendreau & Ross, 1987). Researchers want to be able to answer a number of questions. Is it possible to effectively treat criminal offenders? If so. What

treatments are most likely to be effective? Are these treatments equally effective for all criminals? The early theories of criminal behaviour that were spawned by a belief in rehabilitative efforts offered a preliminary foundation from which later interventions and treatment approaches were derived for criminal offenders (e.g. Yochelson & Sarnenow, 1976). As evaluations of offender treatment were produced, pessimism grew that the psychological interventions were not effective in rehabilitating criminal offenders (Martinson, 1974). However, more recent qualitative and quantitative reviews of the vast body of offender treatment literature are more optimistic and specific about what interventions are effective (Andrews et al., 1990).

Mental health interventions have often met with mixed success among offender and antisocial populations (Stone, 1993). However, increasing attention is being focused on the cognitive correlates of criminal behaviour and related treatment strategies (Andrews & Bonta, 1994). For example, one of the key elements in the treatment of sex offenders has been a focus on their cognitive distortions (Murphy, 1990). Some of the interest on cognitive correlates of criminal behaviour can be traced back to the work of Yochelson and Samenow (1970) whose cognitive interpretation of criminal behaviour identified a number of cognitive distortions that are characteristics of the criminal personality. Several researchers have since suggested that programs focusing on cognitive functioning are most likely to produce positive treatment outcomes (Izzo & Ross, 1990). A number of researchers have identified and described a special segment of the offender population that appears to be the most dangerous, most resistant to intervention, and more likely to drop out of treatment (Hare, 1996). These individuals are often referred to as psychopaths and pose special problems for forensic psychologists. Cleckley (1976) originally

identified a number of traits associated with the psychopath including (a) superficial charm and "good" intelligence, (b) absence of delusions and other signs of irrational thinking (c) absence of nervousness or psychoneurotic manifestations (d) unreliability, (e) untruthfulness and insincerity, (f) lack of remorse or shame, (g) inadequately motivated antisocial behaviour, (h) poor judgment and failure to learn by experience (i) general poverty in major affective reactions (j) specific loss of insight, (k) unresponsiveness in general interpersonal relations, (l) fantastic and uninviting behaviour with drink and sometimes without (m) sex life, impersonal, trivial, and poorly integrated, and (n) failure to follow any life plan.

#### Areas of Special Interest in Forensic Assessment

A second major area of research interest in forensic psychology has been forensic assessment. The court often calls on clinical psychologists to provide their psychological expertise in a matter before the court (e.g. insanity, competence to stand trial, likelihood of future dangerousness at the time of sentencing). Though there has been much debate among legal and psychological commentators as to the appropriate role of clinical psychologists in these matters, research and practice continue to focus on the area (Melton, Petrila, Poythress & Slobogin, 1997).

#### Competency

One of the assessment issues most often faced by forensic psychologists is that of competency (Melton et al, 1997). The general premise of the law is that an individual defendant must demonstrate particular minimum requirements in regard to their understanding of legal procedures and the possible consequences of any legal decision (see *Dusky V. United States*, 1960) if the interests of the individual and society are to be appropriately served by the law

(Reisner & Slobagin, 1990). Much of the research on competency asks whether we are consistent and valid in our assessment and what measures are the most helpful. Furthermore, what variables are likely to be associated with competency? Competency may arise throughout the legal system in regard to standing trial, entering a plea, entering into a contract, and ability to consent to medical treatment (Melton et al, 1997). Though there are separate and distinct areas of competency courts have ruled in the U.S. that defendants are required to exhibit similar abilities across different issues of competency (Godinez Versus Moran, 1993). Though competency is a very broad legal term that takes on a number of different forms both in civil and criminal cases. Competency to stand trial is by far the most prevalent issue a forensic psychologist must face and occurs in 10-15% of criminal cases (Poitress et al. 1994). Of those individuals actually referred for competency evaluations, an average of 30% are initially found incompetent (Roesch & Golding, 1987). Early studies suggested that most of these individuals found incompetent to stand trial have marginal education, few ties to the community, have never been married, and have long histories of criminal justice and mental health involvement (Steadman, 1979).

### Insanity

It is very difficult to define insanity or abnormal behaviour. The issue becomes even more complicated when questions are raised in a court of law about a defendant's mental condition at the time he or she is alleged to have committed a crime. When the defendant pleads "not guilty by reason of insanity", the court must assess his or her mental condition. The issue of insanity is decided by a Judge or Jury after listening to testimony of experts, who are usually psychologists or psychiatrists. It is important to remember that in court, the concept of insanity is

legal rather than psychological. The insanity plea is used in situations where the defendant is judged to be incapable of knowing rights from wrong because of mental disorder. Although psychologists may examine the individual and testify in court, the final decision is a legal one, made by the courts based on legal precedents.

Researchers focusing on insanity attempt to address many of the same questions as those focusing on incompetence do. What characteristics are associated with someone being insane? How can I reliably assess insanity and what psychological tools will be the most effective? However, research on the reliability and validity of insane assessment is largely absent and those that have been conducted employ a number of dissimilar methodologies (Melton et al, 1997). Though insanity standards vary from jurisdiction to jurisdiction and have changed over time, all standards require the presence of a mental illness. Research suggests that defendants exhibiting psychotic characteristics are most likely to be found not guilty by reason of insanity (Melton et al, 1997). Because the presence of mental illness is necessary for the insanity defense, there is an obvious incentive to feign mental illness. As a result, feigning mental illness or malingering is a concern in insanity evaluations as well as most forensic evaluations. Experts are not in agreement over insanity as a legitimate defense. In some cases, insanity is used as a means to avoid prosecution. Normally, if one is judged insane he or she is committed to a mental hospital until cured, if later judged sane, he or she is set free, sometimes after only a light sentence. One proposal is to replace the verdict of "not guilty by reason of insanity" with the verdict of "guilty but mentally ill". Individual found "guilty but mentally ill" would be given the proper psychotherapy to treat their mental disorder

and when they were judged sane, they would be returned to prison to complete their sentences.

A related issue is the ability of the defendant to stand trial. In order to be brought to trial, an individual must understand the charge against him or her and be able to prepare a proper defense with a lawyer. Many times, instead of standing trial. The defendant is judged "incompetent to stand trial" and is committed to a mental institution for treatment, after being confined for a period of time, he or she is released if judged competent. Unfortunately, it is difficult to predict the future behaviour of such a person.

A number of misconceptions surround this area of forensic psychology of the defendant's mental state at the time of the offence or insanity. Although the general public believes a large number of criminal defendants use insanity defence, an eight-state study in the United States conducted by Callahan, Steadman, McGreery and Robbins (1991) found the insanity defense was used in only 1% of all felony cases. The public also believes that most defendants who use the insanity defense are acquitted. Again, in Callahan et al., (1991), they found that defendants were successful in only one-quarter of those cases in which it was used.

### Malingering

Though it is difficult to determine conclusively whether an individual is feigning mental illness, there are a number of mechanism by which forensic psychologists can assess the probability of malingering. The National Mental Personal Inventory (NMPI) has been used to determine malingering and has shown some ability to differentiate between honest respondents and malingerers (Rogers, Sewell & Saltkin, 1990). Moreover, Rogers and colleagues have developed a structured interview, the Structured Interview of Reported Symptoms (SIRS) as a method

to detect malingering and found it has the ability to detect malingering (Rogers et al., 1991).

### Risk Assessment

One of the most pervasive and increasingly important areas of forensic research both in terms of clinical practice and the law is risk assessment. Forensic psychologists are routinely called upon to make assessment of an individual's risk to commit dangerous acts in sentencing, civil commitment, juvenile transfer, and insanity decisions (Heilbrun, 1997). Assessment in these matters may have far reaching impact and at least in part determine whether a person receives jail term, if they are institutionalized in a mental hospital, the length of their criminal sentence, if they are to be released from a mental hospital or prison, and even whether they are to be executed.

### Conclusion

This work reviewed research findings especially from the United State of America on how psychological principles and concepts are presently applied in courts in the United States of America. The main objectives of the review is to agitate the minds of psychologists and legal persons in Nigeria to explore this area of research and concern for the ultimate ends of justice.

Law is definitely made by, and for, the people. The relatively little attention paid by lawyers, judges and legal scholars in Nigeria to human psychology is surprising. Too often, legal writers have either presupposed or borrowed impoverished conceptions of human nature, erecting legal theories for people presumptively possessed for the requisite nature, regardless of the psychology of the actual persons who make and live under the law. The Nigerian legal system is called upon to meet new challenges of legal development by considering the psychology of the

individual which determines his behaviours and actions in society. It is the conclusion that Law and Legal issues in Nigeria will incorporate in their practice and decisions psychological concepts and principles for the total achievement of the ideal meaning and practice of Justice.

#### Recommendations

The curriculum of the course "Introduction to Psychology" as presently taught to law students in some Nigerian Universities should be changed to psychology and law, dealing specifically with how psychological issues and concepts are applied in law.

Psychology departments in Nigeria are called upon to introduce at graduate and undergraduate levels courses in psychology and law. Research journals on psychology and law are to be established in Nigeria to publish research works in the area. More research needs to be conducted on the application of psychological determinations to legal proceedings.

Psychologists in Nigeria need strong advocacy in this matter in order to create awareness and relevance of psychology and law in Nigeria.

Minorities among us especially those of them that suffer from psychological disorders need to be given the opportunity by law to ascertain their mental state to know if they are aware of the crime at the time they are committing same. This will enable the Judge (court) to be at its best in arriving at the most reasonable, fair and just judgment on the given vulnerable individual.

Lawyers are advised to plead psychological state or condition or effects of an action in their pleadings and claim and lead evidence on that during trial. For example, in a tortuous liability of nuisance or non performance of a contractual agreement. Suppose the client lost over five million naira from the refusal of the defendant to perform his own part of the

contract, the loss of the five million might have caused psychological disorder to the client which may include psychosis, schizophrenia, trauma, insomnia etc. Send the client to a psychologist who will assess him to determine what exactly he has suffered from and for how long. Then plead it. Plead also that in the course of the psychological disorder, the client could not do his business which has further cost him a loss of a given amount if he was not psychologically ill doing his business. Bring the psychologist to the court to give expert evidence in line with the pleadings. Such expert testimony will therefore assist the court in proper determination of damages.

#### References

- American Board of Forensic Psychology and American Psychology - Law Society (1995). *Petition for the Recognition of a Specialty in Professional Psychology*. Available online at <http://www.unl.edu/AP-Ls/petition>. POF.
- Andrews, D. et al (1990). Does Correctional Treatment work? A psychologically informed meta-analysis. *Criminology*, 28, 369-404.
- Bartol, C. R., & Bartol, A. M. (1994). *Psychology and the Law: Research and Application*. Pacific Grove, CA: Brooks/Cole.
- Besoff D. N. et al (1997). Training in Law and Psychology: Models from the Villanova Conference. *American Psychologist*, 52. 301-1310.
- Blackman, J. & Brickman, E. (1984). The Impact of expert Testimony on Trial of Battered women who kill their husbands. *Behavioural Sciences and the Law*. 2, 413-422.

- Brown Vs Board of Education, (1954) 347, US: 488.
- Callaharn, V. A., Steadman H. J., McGreery, A. & Robins P. C. (1991). The Volume of Characteristics of Insanity Defence Pleas: An Eight state study. *Bulletin of American Academic Psychiatric Law*, 19, 337.
- Cleckley, H. (1976). *The Mask of Sanity* (5th ed) Saint Louis: C.V. Mosby 7 Co.
- Crowley, M. J. et al (1994). The Juridical Impact of Psychological Expert Testimony in a Simulated Child Sexual Abuse Trial, *Law and Human Behaviour*, 18, 89-105.
- Frazier, P.a. & Borgida E. (1992). Rape Trauma Syndrome: A Review of the Case law and Psychological Research. *Law and Human Behaviour*, 16, 293-311.
- Gendreau P; & Ross, R. (1987). Revivication of Rehabilitation Evidence for the 1980's. *Justice Quarterly*, 4, 349-407.
- Grisso, T. (1991). A Developmental History of the American Psychology. *Law Society Law and Human Behaviour*, 15, 2 13-230.
- Hare, R. D, (1996). Psychopathy: A Clinical Construct Whose Time has Come. *Criminal Justice and Behaviour*, 23, 25- 54.
- Harvard, K. (1997). Prediction versus Punishment: Toward a Principled Distribution in the Restraint of Released Sex Offenders. *Harvard Law Review*, 21, 347-360.
- Heilbrun, K. (1997). Prediction versus Management Models Relevant to Risk Assessment. The Importance of legal Decision- Making Context. *Law and Human Behaviour*, 23, 347-360.
- Hess, A. K. (1996). Celebrating the Twentieth Anniversary of Criminal Justice and Behaviour: The Past, Present, and Future of Forensic Psychology. *Criminal Justice and Behaviour*, 23, 236-250.
- Izzo, R. & Ross, R. (1990). Meta-analysis of Rehabilitation Programs for Juvenile Delinquents: A Brief Report. *Criminal Justice and Behaviour*, 17, 134-142.
- Kasian, S.M. et al (1993). Battered Women Who Kill: Jury Simulation and Legal Defences. *Law and Human Behaviour*, 17, 289-312.
- Loftus, E.F. (1993). Psychologists in the Eyewitness World. *American Psychologists*, 48, 550-552.
- Martinson, R. (1974). What Works? Questions and Answers about Prison Reform. *The Public Interest*, 35, 22-54.
- McCorkle, R. (1993). Punish and Rehabilitate? Public Attitudes Towards Six Common Crimes. *Crime & Delinquency*, 39, 240-252.
- McGehee, G.B. Et al (1937). The Reliability of the identification of the Human Voice. *Journal of General Psychology*, 17, 249-271.
- Melton, G.B., Petrila, J., Poythress, N. G & Slobbpgin, C. (1997). *Psychological Evaluations for the courts: A Handbook or Mental Health*



- Professionals and Lawyers. New York: Guilford.
- Murphy, W. (1990). Assessment and Modification of Cognitive Distortions in Sex Offenders". In W. Marshal, D. Lewis & H. Barbaree (Eds). *Handbook of Sexual Assault: Issues, Theories, and Treatment of Offender* (331-342), New York: Plenum.
- Penrod S. D. & Cutler, B.L (1987). Assessing the competence of juries (293-3 18). In I. B. Weiner and A. K. Hess (Eds). *Handbook of Forensic Psychology*. New York: John Wiley & Sons.
- Polythress, N.G. et al., (1994). Client Abilities to assist Counsel and make Decisions in Criminal Cases. Findings from Three Studies. *Law and Human Behaviour*, 18, 437- 452.
- Raitz, A. et al., (1990). Determining Damages: The Influence of Expert Testimony on Jurors Decision Making. *Law and Human Behaviour*, 14, 385- 395.
- Reisner, R, & Slobogin, C. (1990). *Law and the Mental Health System Civil and Criminal Aspects*, St. Paul MN: West.
- Roesch, R. & Golding S. L. (1987). Definition and Assessing Competency to Stand Trial. In I. B. Weiner and A.K. Hess (Eds). *Handbook of Forensic Psychology*. New York: John Wiley & Sons.
- Rogers, R., et al., (1991). Standardized Assessment of Malingering: Validation of the Structured Interview of Reported Symptoms. *Psychological Assessment*, 3, 89-96.
- Rogers, R et al., (1990). Effects of Opinions on Juror Perceptions of Insanity. *International Journal of Law and Psychiatry*, 13, 225-232.
- Rogers, R, Sewell, K. W. & Salekin, R. T. (1994). A Meta-analysis of Malingering on the MMPI-2. *Assessment*, 1, 227-237.
- Schulman R, et al., (1994). Jurors Decisions in Trials of Battered Women who Kill. The Role of Prior Beliefs and Expert Testimony. *Journal of applied Social Psychology* 24, 316-337.
- Schulman, R. A. & Hastings, P. A. (1996). Trials of Battered Women who Kill: The Impact of Alternative Forms of Expert Evidence. *Law and Human Behaviour*, 20, 167-187.
- Schulman J., Shaver, P. Colman R, Emrich B. & Christie R, (1973). Recipe for a Jury. *Psychology Today*, 37, 44, 77-84.
- Steadman, H. J. (1979). *Beating a rap?: Defendants Found Incompetent to Stand Trial*. Chicago: University of Chicago Press.
- Wells, G. L. (1995). Scientific Study of Witness Memory Implication of Public and Legal Policy. *Psychology Public Policy and the Law*, 1, 726-731.
- Yochelson & Sarnenow, S. (1976). *The Criminal Personality: A Profile for Change*. New York: Ironstone.

---

Okoye Jude Uche holds a doctorate degree in law and is a lecturer in the faculty of law at Nnamdi Azikiwe University - Nigeria.