



## Functions Of Forensic Psychologists In Criminal Justice System

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### Abstract

*The paper examined the functions of Forensic Psychologists in the legal system which includes: expert witness, trial consultancy, malingering evaluation, competency evaluation and sanity evaluation. It further x-rayed the effects of their absence within the criminal justice system and emphasized that when these functions are absent within the criminal justice system due to the non-recognition of the functions of these experts, the effects are always enormous and affects all the stakeholders in the system. These effects include: frustration, delay of justice, anger, stress, betrayal and confusion among others. The stakeholders that are grossly affected are: the accused, victims, judicial officers and the police. The paper concluded by recommending that Forensic Psychologists should be employed in our criminal justice system in order to ameliorate these effects and ensure a better and refined criminal justice system comparable to its counterparts in the comity of nations.*

**Key words:** *Forensic Psychology, Justice, Criminal Justice System*

### Introduction

Forensic psychology is best described as an applied amalgam of both the physical and behavioral sciences (Girard, 2008). It is the field of psychology that deals with all aspects of human behavior as it relates to the law or legal system. Approaches, tools, and techniques of case resolution have become truly interdisciplinary (Jacobs, 2008). It is the eclectic and novel nature of the practice of forensic science that gives it tremendous utility. Its functions within the legal framework can also never be overemphasized, hence, it has been suggested that the absence of trained professional in this field (Forensic Psychologists) in the Nigerian Criminal Justice System is a major system flaw (Agbonika, 2014).

The absence of Forensic Psychologists has adversely affected all the stakeholders in the system in different ways; judges are affected, many victims are denied justice while some are on endless list of awaiting trials. The accused and the police are not left out in these negative effects within the Criminal Justice System of our country as they have their own share of the flawed system (Erhaze & Momodu, 2015).

### **Justice**

Justice is an accepted limitation on the arbitrary rights of a ruler; Injustice means that a ruler 'has the right to swing his fist' anywhere; Justice means that the ruler's right to swing his fist 'stops at the end of the subject's nose' (Christensen & Raynor, 2003). According to West's Encyclopedia of American Law (2008) justice is 'the proper administration of the law; the fair and equitable treatment of all individuals under the law'. It is the constant and perpetual disposition to render every man his due whenever the need arises. So when there is an absence of fairness in the adjudication of cases, then, there is no justice.

As the concept of justice means different things to different people, there are variations of justice. One of them is Utilitarianism which is a form of consequentialism, where punishment is forward-looking justified by the ability to achieve future social benefits resulting in crime reduction. The moral worth of an action is determined by its outcome. Another variation is Retributive justice, which basically regulates proportionate response to crime proven by lawful evidence, so that punishment is justly imposed and considered as morally correct and fully deserved. The law of retaliation (*lex talionis*) is a military theory of retributive justice, which says that reciprocity should be equal to the wrong suffered; "life for life, wound for wound, stripe for stripe (Christensen & Raynor, 2003).

Another variation is the Restorative justice which is concerned not so much with retribution and punishment as with making the victim whole and reintegrating the offender into society. This approach frequently brings an offender and a victim together, so that the offender can better understand the effect his/her offence had on the victim. One other variation of justice is the Distributive justice which is directed at the proper allocation of things —wealth, power, reward, respect — among different people (Zimmerman, 2010).

### **Criminal Justice System**

The criminal justice system is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws (Adeyeye & Anor, 1996). The Criminal Justice System in Nigeria commences with commission of a crime and continues with subsequent interventions by the law enforcement agencies, the power of arrest, arraignment, trial, sentencing and punishment of the offender.

According to Adeyeye and Anor (1996) a criminal trial involves the state, the society and the offender who committed the act. Whether the accused or defendant did the act or committed the omission alleged against him or her



depends on how well the judicial processes were carried out leading to sentencing him/her for his/her wrongdoing or did. There are four major components of the criminal justice system in Nigeria namely:

- a. The Police.
- b. The Prosecution.
- c. The trial Court (criminal court divisions)
- d. The correctional institutions which include the prisons and remand homes.

### **Reasons for criminal justice system**

According to Adudu and Gunni (1983), there are five main reasons for the criminal justice system. They are:

- (i) Crime prevention and maintenance of order
- (ii) Detention and enforcement (including investigation)
- (iii) Adjudication
- (iv) Sentencing/disposition
- (v) Administration of sentences/dispositions.

Within the criminal justice system, the Police take principal responsibility of stages (i) and (ii) above, while the courts are responsible for (iii) and (iv). The courts, prisons and community take charge of (v). These agencies all operate within rules which allow a significant amount of discretion to the officers involved in the administration of criminal justice system.

### **A Conspectus of the functions of Forensic Psychologists within the criminal justice system**

The functions of Forensic Psychologists within the criminal justice system are: competency evaluations, expert witness, trial consultancy and sanity evaluations.

### **Competency Evaluations**

Competency to stand trial (CST) is a doctrine of jurisprudence that allows for the postponement of criminal proceedings should a defendant be unable to participate in his or her defense on account of mental disorder or intellectual disability. The origins of competency to stand trial can be traced to Babylonian Talmud and early Judeo-Christian texts (Nussbaum, Hancock, Turner, Arrowood & Melodick, 2008). A defendant's right to a fair trial is one of the core principles of the United States' criminal justice system, which strives to provide all defendants with objective and dignified proceedings (Pirelli, Gottdiener, & Zapf, 2011). This requires that all defendants maintain a basic level of competence to proceed (Murrie & Zelle, 2015). Within the context of adversarial proceedings, competence refers to a defendant's present ability to meaningfully participate in his or her defense and comprehend the trial process.

Status of a competency assessment may change suddenly, but ascertaining whether such an incapacitation has taken place requires a diligent examination of several pertinent areas. In an instant, even the most able executive can become incapacitated—but how to tell? How does the defendant communicate? How much does he really understand? How well can he assist his attorney? What does he remember? What will his behavior be like in court? The answers to competency assessment questions such as these require a thoughtful, case-specific forensic expert consultation, with openness to input from a variety of sources.

When there is a question of the accused's competency to stand trial, a forensic psychologist is appointed through the court to examine and assess the individual. The individual may be in custody or may have been released on bail. Based on the forensic assessment, a recommendation is made to the court whether or not the defendant is competent to proceed to trial. If the defendant is measured incompetent to proceed, the report or testimony will contain recommendations for the interim period throughout which an effort at restoring the individual's competency to understand the court and legal proceedings, as well as participate appropriately in their protection will be made (Zapf, Roesch & Pirelli, 2014). Often, this is an issue of committed, on the advice of a forensic psychologist, to a psychiatric treatment facility until such time as the individual is deemed competent.

### **Expert Witness**

An expert witness is a witness who provides to the court a statement of opinion on any admissible matter calling for expertise by the witness and is qualified to give such an opinion. The duty of an expert witness is to provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within their expertise (Morris & DeYoung, 2012). This is a duty that is owed to the court and overrides any obligation to the party from whom the expert is receiving instructions. There should be a sufficiently reliable scientific basis for the expert evidence or it must be part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience (Chauhan, Warren, Kois & Wellbeloved-Stone, 2015). Unlike fact witnesses, who are limited to testifying in relation to what they know or have observed, expert witnesses have the skill to express opinion because, as their name suggests, they are presumed to be —experts in a certain area of knowledge. They possess specialized knowledge in relation to the topic (The Psychological Society of South Africa (PsySSA), 2015). Expert witnesses are called upon to testify on matters of mental health (clinical expertise) or other areas of expertise such as social, experimental, cognitive, or developmental. The role of being an expert witness is not primary and it is usually performed in conjunction



with another role such as that of researcher, academic, evaluator, or clinical psychologist. Clinical forensic psychologists evaluate a defendant and are then called upon as expert witnesses to testify on the mental state of the defendant. In the past, expert witnesses primarily served the court rather than the litigants. Nowadays, that very rarely happens and most expert witness recruitment is done through trial attorneys. But regardless of who calls in the expert, it is the judge who determines the acceptability of the expert witness.

### **Trial consultancy**

According to Benforado (2015), Forensic Psychologists often are involved in trial consulting and a trial consultant, a jury consultant, or a litigation consultant, is a social scientist who work with legal professionals such as trial attorneys to aid in case preparation, which comprises selection of jury, development of case strategy, and witness preparation. They rely heavily on research. Trial consultants are faced with several ethical issues and these are challenges to their ethical responsibilities as applied researchers who need to be following guidelines of ethical research. Trial consultants are hired through attorneys and conflicts may arise when each party has a different viewpoint on a certain issue, such as which prospective jurors should be excused, and whether the jurors' preferences are appropriate for the case or not. Indeed, their functions are quite enormous.

According to Posey and Wrightsman (2005), the functions of trial consultants are: preparing difficult witnesses for depositions, creating themes for the trial, preparing clients and witnesses for testifying at trial, providing the lawyers with input on their opening statement, overseeing jury selection and performing post-verdict jury polling. The work of trial consultants often begins months before a trial, with the implementation of community surveys. Through this time-consuming work, forensic psychologists look for correlations between demographics and specific views on issues pertaining to the case.

As trial consultants, forensic psychologists must understand the psychological processes behind how jurors attribute blame. Using the psychology of blame, trial consultants help lawyers create strong themes for their cases. They help prepare witnesses by honing their communication and listening skills. Also, they prepare them to behave cooperatively and to give clear and complete answers. Finally, they develop recommendations for trial strategy based on empirical research and are sensitive to possible biases that can skew results (Smith, 2006).

### **Sanity Evaluation**

Sanity evaluation is a type of assessment done by a forensic psychologist in order to ascertain a person's mental state during the time the actual crime took place. A

person could be deemed to be competent to stand trial but also deemed to have been clinically insane during the commission of the crime. A forensic psychologist will usually do this type of evaluation if there is concern that the defendant was undergoing some severe impairment to his or her mental state during the time the crime was committed (Murrie & Zelle, 2015). The forensic psychologist is trained also to be appointed through the court to evaluate the defendant's state of mind at the time of the offense. These are defendants who the judge, prosecutor, or public defender considers, through personal interaction with the defendant or through reading the police report, may have been significantly impaired at the time of the offense.

In other situations, the protection attorney may decide to have the defendant plead not guilty through cause of insanity. In this case, usually the court appoints forensic evaluators and the protection may hire their own forensic expert. In actual practice, this is rarely a plea in a trial. A plea for insanity is actually used in only 1 in 1000 cases (PsySSA, 2015). Assessments that would be used can contain the Mental State at time of Offense (MSO), an assessment that judges the individual's mental state when the offense was committed, helping to decide whether they should be held liable for the crime. The individual can also plea 'Not Guilty through Cause of Insanity' (NGRI) or 'Guilty but Mentally III' (GBMI), cases where the individual will start their sentence in a mental health facility and then complete it in a correctional facility. Usually any judgments in relation to the defendant's state of mind at the time of the offense are made through the court before the trial process begins (McNichols, Gowensmith & Jul, 2011).

### **Negative Effects of the Absence of Forensic Psychologists in the Criminal Justice System**

The psychological effects of the absence of Forensic Psychologists within the criminal justice system are enormous. They cut across different stakeholders of the system including; the accused, victims judicial officers, and the police.

#### **The accused *Stigma***

The accused individuals and their families do indeed suffer enormously from the stigma and revulsion associated with criminal entanglement, from the deprivations during the investigation and the lifelong suspicion. Even if such allegations do not lead to criminal proceedings, they are likely to have life-changing effects. Formal investigations, whether in a civil or criminal context, are harrowing for the accused person, and may result in immediate suspension from work and temporary restrictions on their right of free association. Sometimes, a record of having been reported and investigated can cause longer term damage to employment prospects and relationships (Scheerhout, 2014). The stigma of a false



allegation is felt by the whole family and can lead to family breakdown, or permanently damage in their relationship, but, these could be averted with the presence of Forensic Psychologists (Grounds 2004).

**Anger and Betrayal-** In the majority of accounts, an overwhelming sense of anger and betrayal emerged. This was not directed at their accusers, but at employers who were thought to have encouraged the allegations, at the police for what our participants saw as treating them as guilty from the outset, and at a 'victim-centred' criminal justice system, with its provisions for complainants on one hand, and what they felt was a failure to recognize rights or due process of the accused on the other. Indeed, almost all of our participants had lost faith in the criminal justice system though all but one were not convicted, were not formally found guilty of any crime, and did not lose their liberty, yet, one can authoritatively say that the presence of Forensic Psychologists would save the situation (Garner, 2015).

**Anxiety and Depression-**The majority reported high anxiety levels, severe depression, ill health and associated symptoms of trauma, with short and longer-term symptoms, with some experiencing permanent behavioural and personality changes. The effects of false allegations were felt by their partners and children too, with anxiety and depression experienced by many family members, but, the professional help of the Forensic Psychologists would be of an immense benefit in handling these psychological states (Grounds 2004).

### **The Victims**

According to United Nations Office for Drug Control and Crime Prevention (2000), the psychological effects of the victims include the following; anger, fear, frustration, and confusion.

**Anger or rage** – they may be angry with God, the offender, service providers, family members, friends, the criminal justice system, or even themselves. Many victims experience strong desires for revenge or getting even. Hate may even be felt by victims. These strong emotions are often disapproved of by the rest of society, which can leave the victim feeling like an outcast. It is certainly justified for victims to feel anger toward the person or people who harmed them.

**Fear or Terror** – It is common for victims to feel terror or fear following a crime that involved a threat to one's safety or life, or to someone else a victim cares about. Fear can cause a person to have panic attacks if they are ever reminded of the crime. Fear can last for quite some time following the commission of a crime and under certain circumstances, it can become debilitating. Fear or terror that

becomes overwhelming is unhealthy and victims should consult a psychologist about it as soon as possible.

**Frustration** – Many victims are frustrated by the feelings of helplessness or powerlessness that surface when the crime takes place. This can be especially true if victims were unable to fend off an offender, call for help or run away. After the crime, victims may continue to feel frustration if they cannot access the support and information that is necessary to their healing and only a psychologist can offer it.

**Confusion** – Victims of crime may become confused if they are unsure of what actually happened, as crimes often occur quickly and are chaotic. Victims might also become confused, but, it is the duty of psychologist to work on their emotion and bring them to normalcy.

#### **Judicial Officers**

**Distress**- Inability to assess the required information from the suspects as well as its frustrating effects due to their mental state is a serious distressing factor to judicial officers (judges and lawyers) mainly within the court proceedings and it sometimes leads to psychopathological distress and incapacitates them in their daily functioning (Edelstein, Nygren, Northrop, Staats & Pool, 1993). This is because some suspects' (defendants or plaintiffs) "cognitive functioning" which is a component of statutory standards for capacity in many countries of the world is unable to help these suspects to furnish these officials with the right information leading to a lawyer's inability to gather the needed information and judge's inability to give a verdict on a case, resulting from insufficient evidence. This psychopathological distress which influences their mood, eating pattern, social life and sleeping pattern and in turn affects both their family and professional lives can be easily handled by psychologist (Sabatino & Basinger, 2000).

#### **The Police**

**Frustration**-The absence of expert witness to substantiate evidence has led to the frustration of many police officers due to their inability to secure conviction of their suspects. They lose many cases at the court of law due to the absence of an expert witness and their frustration often lead to the extent of abandoning these cases thereby allowing a possible guilty person (suspect) to go free. The long delay in prosecution of cases of suspects arrested by the police in the absence of sufficient evidence has further aggravated the frustration of the police officers (Iwarimie-Jaja, 1995). The striking out of their cases by some judges due lack of evidence also play significant role in their frustration, yet, a psychologist can ameliorate this impact (Dambazau, 1999).





### **Stressful**

Police work is often regarded as an extremely stressful occupation, and officers typically suffer a variety of physiological, psychological and behavioral stress effects. It has been argued that particular attention should be given to occupational stress in policing, as its potential negative consequences affect society in more direct and critical ways than stress in most other occupations. Officers operating under severe and chronic stress may well be at greater risk of error, accidents and over-reaction that can compromise their performance, jeopardize public safety and pose significant liability costs to the organization. However, police officers are rarely provided with effective stress management strategies to help alleviate these problems which is the duty of a psychologist (Vagal, 1992).

### **Conclusion**

Criminal justice system is the set of agencies and processes established by governments to control crime and impose penalties on those who the violate laws and its dispensing of justice is best done in the presence of accurate facts and evidence as well as the normal psychological state of the stakeholders and psychologists are best trained to provide these. Therefore, mirroring the functions of Forensic Psychologists, one cannot but accept that if they are employed within the criminal justice system, they will alleviate these negative effects due to their absence on the accused, victims, judicial officers and police. Therefore, to achieve these, we recommend that this group of professionals be accommodated within our legal setting in order to engage in expert witnessing, trial consulting, malingering evaluation, competency evaluation, and sanity evaluation to help solve these inherent problems/negative effects in our criminal justice system so that it can be well equipped to deliver justice to all, and at the same time be repositioned to be free from international mockery.

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