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Psychology and Law: A Symbiosis of Two Social Science Oriented Disciplines

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Abstract
The paper is aimed at highlighting the confluence of law and psychology: interrogating the extent to which psychology could be applied in/through the law court to further the course of justice under the theme 'Psychology and Law. The three operative concepts here, therefore, are justice, law and psychology. Law and psychology are two separate disciplines, but have much in common. While psychology's goal is to understand behavior and law's goal to regulate it, both fields make assumptions about what causes people to act the way they do. It is a known fact that psychologists, world over, engage in research how to improve the legal system.

Keywords: *Psychology, law, Nigeria, social Science*

Introduction

Justice is the legal or philosophical theory by which fairness is administered. It can also be defined as the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or assignment or merited rewards or punishments (Merriam-Webster). Advocates of the Divine theory argue that Justice and indeed the whole of morality is the authoritative command of God. To them, because goodness is the very nature of God, it follows that His commands are just. To the Naturalists, justice involves the system of consequences that naturally derive from action or choice. To this school of thought, justice, like Newton's third law of motion, justice requires that for every action, there must be an equal and opposite reaction.

Simply put, therefore, justice is the proper administration of the law and the fair and equitable treatment of all individuals under the law.

What, therefore, is the law? Law is a system of rules that are enforced through institutions to govern behaviour. Laws can be made by a collective legislature or a single legislator. These are called statutes. Decrees are made by military dictators (single legislator) and the Judges in the courts also make laws through court decisions called judicial precedents. Laws, by whatever name called, are also made by families, communities or institutions. They could be customs or usages and

family norms, rules and prescriptions. They are all laws, recognisable and enforceable by relevant institutions, particularly the courts of law.

The main characteristic of justice under the law or justice according to law is depicted by the 18th Century architecture of Lady Justice at Castellania, built during the Order of St. John. This masterpiece now known as the symbol of justice, depicts a goddess equipped with three symbolic items, a sword (coercive power of a court), scales (an objective standard by which competing claims are weighed), and a blindfold (indicating that justice should be impartial and meted out without fear or favour, regardless of money, wealth, power or identity). See also Deuteronomy 16. 18.

Psychology is a diverse discipline grounded in science but with nearly boundless applications in everyday life just like law. Psychology is a vast subject but for this exercise, our discussion is restricted to Legal Psychology and related headings, like Forensic Psychology, Criminal Psychology.

What is Legal Psychology?

"Legal psychology is one of a number of disciplines that applies the psychological insights of human behaviour to matters regarding the law (Monahan & Loftus 1982). Developmental psychology, community psychology, social psychology, and cognitive psychology are all subspecialties within the realm of psychology and the law. However, likely the closest field of work to legal psychology is forensic psychology. This is the case because legal and forensic psychology shares a number of characteristics, not the least of which are similar job duties in similar work settings". In between Legal Psychology and Forensic Psychology is Criminal Psychology. To the ordinary mind, as we shall see from the definitions, these three seem to be addressing the same issues through different channels?

Legal psychology involves empirical, psychological research of the law, legal institutions, and people who come into contact with the law. Legal psychologists typically take basic social and cognitive principles and apply them to issues in the legal system such as eyewitness memory, jury decision-making, investigations, and interviewing. The term "legal psychology" has only recently come into usage, primarily as a way to differentiate the experimental focus of legal psychology from the clinically-oriented forensic psychology.

Together, legal psychology and forensic psychology form the field more generally recognized as "psychology and law". Following earlier efforts by psychologists to address legal issues, psychology and law became a field of study in the 1960s as part of an effort to enhance justice delivery. The multidisciplinary American

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Psychological Association's Division 41, the American Psychology-Law Society, is active with the goal of promoting the contributions of psychology to the understanding of law and legal systems through research, as well as providing education to psychologists in legal issues and providing education to legal personnel on psychological issues. Further, its mandate is to inform the psychological and legal communities and the public at large of current research, educational, and service in the area of psychology and law.

Forensic psychology involves the application of various disciplines, among them psychology, criminal justice, and law, to address matters of a legislative, judicial, or administrative nature. Forensic psychologists are best known as profilers who develop psychological profiles of criminals for law enforcement agencies. They do not just deal solely with criminology; rather, their work is at the intersection of clinical psychology and forensics and involves research and application of these disciplines to a variety of issues which manifest in criminal matters and also in civil issues. For proper understanding, the word 'FORENSIC' simply means 'Used in or suitable to courts of law or public debate. (Black's Law Dictionary 8th Edition.)

Clinical Psychology, on the other hand, is a career field that focuses on the identification and treatment of various mental, emotional, social, and behavioural health issues. Clinical psychologists in higher educational institutions conduct research, engage in training future psychologists and investigating the causes or effective treatments for mental health issues, respectively. Clinical psychology is a very popular field of work outside Nigeria, so competition for jobs is usually quite high.

It is the largest, most common branch of psychology. And, while mental health is the common core of clinical psychology, there are a number of sub-sets within that discipline which include pediatric and adult mental illness disorders, learning disabilities, substance abuse, emotional distress, health psychology, severe mental illnesses (i.e. post-traumatic stress disorder (PTSD), schizophrenia, obsessive-compulsive disorder (OCD), etc.), geriatric-related mental disorders, and sexual perversions (i.e. child molestation, rape, sexual abuse, etc.).

It is important to remember that although clinical psychologists are considered "research doctors," they are not considered "medical doctors." In other words, they are not able to prescribe medications or perform medical procedures or surgeries on patients/clients, they are, however, able to administer psychological assessments, assess/diagnosis patients, develop treatment plans, and use psychological methods, approaches and techniques to treat patients/clients.

Criminal psychology is a discipline that merges psychology and criminal justice. Trained in the principles of human behaviour, criminal psychologists work closely with attorneys, the courts, law enforcement agencies, and various other stakeholders involved in civil and criminal cases.

It is a relatively young field of work, gaining recognition from the American Psychological Association in 2001. However, psychologists have been serving as consultants to the courts in the United States and other first world countries for decades. Criminal psychologists can work in a number of capacities, including for the accused or for victims, during the trial phase as an expert witness, or they might work to rehabilitate offenders that have already been convicted of a crime.

What Does a Criminal Psychologist Do?

Criminal psychologists work in the field of forensics, applying psychological principles to the criminal justice system. Much of their time is spent conducting evaluations of the accused and alleged victims. For example, a criminal psychologist might evaluate a defendant to determine his or her competency to stand trial. They might also interview the victim of a crime in order to establish a timeline of events. Providing expert testimony is another primary area of work for criminal psychologists. Working in civil, family, criminal, and military courts, criminal psychologists may provide testimony in a custody hearing, in a matrimonial cause, on which parent they perceive to be more appropriate for custody of minor children. They might also work with witnesses or victims, particularly children, to develop a clearer picture of what happened and whether or not the witness will be reliable on the witness stand. Criminal psychologists can testify in military courts as well, speaking to the state of mind of the defendant during his or her alleged crime.

Psychologists can also use their expertise in the criminal justice system to assist attorneys and the court. Criminal psychologists can also help prosecutors and defence attorneys conclude which arguments are most persuasive in order to make their case. In high profile cases, a criminal psychologist would also be asked to conduct a climate survey to determine the level to which pre-trial publicity has impacted public opinion about the case.

Therapy is not typically one of the criminal psychologist's duties but, some psychologists offer therapeutic services to individuals who are compelled by the court to participate in treatment. (This is where probation of offenders under the Nigerian criminal justice system comes into play). This might involve couples counselling for parents during or after custody has been determined, individual

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counselling for a person found guilty of a crime, or group counselling for people that have an addiction.

Criminal psychologists focus on a single event (such as a specific crime) or a specific task (such as a mental health evaluation) and report their findings. They also tend to become experts in a highly specific field, such as victimology, chemical dependency evaluation, or sex offender treatment.

Criminal psychologists may also attempt to explain why some individuals exposed to certain variables and stimuli become criminals, while others exposed to the same set of circumstances do not. As can be seen from this definition, there is a very thin line between Criminal Psychology, Legal Psychology, Forensic Psychology and Clinical Psychology in relation to legal issues and administration of justice. Being a lawyer (judicial officer) and not a psychologist, therefore, I do not intend to proceed further or enter into further enquiry about their respective characters or inter-relationships. We as judges see them all as one and the same thing.

As observed earlier in this discussion, the Psychologist holds an important and indispensable position in the criminal justice and in fact the entire justice delivery system in the United States and Europe and South Africa to a large extent. All the roles and specialization in the foregoing definitions play an important part in the judicial and law enforcement sector of those other jurisdictions. Regrettably, the Nigerian situation or perception of the psychologist and his role in the law enforcement and judicial system is still elementary and yet to attend agenda status in the judiciary personnel costs estimates of Nigerian governments, the fact that most situations, from the investigative to the adjudicative and post adjudicative levels in criminal procedure and the civil relations call for psychological intervention.

What is the difference between criminology and forensic psychology?

For purposes of better understanding of our definitions, it will be proper at this stage to understand the basic difference between Criminology and Forensic Psychology, two subjects that are directly related to criminal justice. Forensic psychology, as has been said is a union between the justice system and the field of psychology. Here, the teachings and principles of psychology are applied to the justice system with the intent of creating a more robust and fool proof justice delivery system. More specifically, forensic psychologists use their expert knowledge and judgment to determine if a defendant is competent or mentally fit to stand trial or not and whether the defendant was mentally stable or insane at the time the crime was committed or not.

Criminology on the other hand, is the study of criminal behaviour at the micro and macro levels, i.e. individual and social levels. Using scientific methods and tools, criminologists study the crime, the behaviour of the criminal as well as the victims of the crime. The purpose of criminologists is to understand why crimes take place, the impact they have and leave behind and how to prevent those crimes from happening again in the future. They use statistics, empirical evidence, past research and quantitative methods to study crime. From the inception of the British type criminal law and procedure, evidence and civil practice in Nigeria as early as 1916, when the criminal code was first introduced, the need for expert opinion or evidence in the legal process has been recognised. However, no elaborate provisions were made for psychology to play a leading or at least a supportive role in the legal or judicial process.

SECTION 68 EVIDENCE ACT, 2011 AS AMENDED, provides for the opinion of experts in judicial proceedings, criminal and civil.

68. 1. When the court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to the identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions are admissible.

2. Persons so specially skilled as mentioned in subsection (1) of this section are called experts.

From the definition of Expert in S.68 of the Evidence Act, it is clear that the opinion of a psychologist, of any specialisation, (Legal, Forensic, Clinical, Criminal or Social) is subsumed under the general classification of science. In practice, courts have relied on forensic scientists, medical doctors/psychiatrists. I am not aware of any records where a Psychologist qua Psychologist has been specifically summoned, subpoenaed or invited to testify, assist or clarify any issue in any court in Nigeria, the fact that almost on daily basis there are score of matters which require the intervention of a Psychologist (whether by way of advice, opinion, counselling or clarification). There are no records also of the presence of Psychologists on the personnel of the Police Force, as an investigative agency, to offer professional assistance and help that organization in the treatment of suspects and collection and collation of evidence for the benefit of the courts.

The situation in the United States and some other more developed jurisdictions offers the justice delivery system, the police and the courts, better opportunities for obtaining and assessing evidence. The system, though so well articulated and

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to a large extent very effective is not without its shortcomings, hence in recent times we have heard of convicted persons who were freed, discharged and acquitted after several decades of incarceration, upon findings that the convicting evidence was faulty or improperly obtained.

The American Psychological Association, after in-depth research into these cases, the manner of obtaining statements from arrested persons, the shortcomings or observed irregularities in the confessional statements so obtained, made some resolutions in August 2004, and recommended steps and modalities for obtaining more realistic statements from suspects. In their research, they found that:-

1. Law enforcement officers upon gaining a confession from a criminal suspect, often close their investigation, deem the crime solved, and sometimes overlook exculpatory evidence or other possible leads, even in cases in which the confession is internally inconsistent, contradictory by external evidence, or the product of coercive interrogation. (Leo & Ofshe, 1998; Drizin & Leo, 2004)
2. Prosecutors, upon learning of a suspect's confession, tend to charge suspects with the highest number and types of offenses, set bail higher, and are far less likely to initiate or accept a plea bargain to a reduced charge (Leo & Ofshe, 1998; Drizin & Leo, 2004; but see Redlich, 2010).
3. Many adults with mental disabilities and younger adolescents are limited in their understanding of the Constitutional rights to silence and to counsel, lack the capacity to weigh the consequences of a rights waiver, and are more likely to waive their rights (Cooper & Zapf, 2008; Rogers et al., 2007a; a pattern that also afflicts ordinary adults who are under stress (Rogers, Gillard, Wooley, & Fiduccia, 2011; Scherr & Madon, 2013).
4. Interrogations that are excessive in length, include the presentation of false evidence, or include implicit or explicit promises of leniency increase anxiety, create an incentive to escape the situation, mislead the suspect into believing that a confession is in one's best interests, and thereby increase the risk of false confessions (Drizin & Leo, 2004; Horselenberg, Merkelbach, & Josephs, 2003; Kassin & Kiechel, 1996)
5. Innocent persons have falsely confessed to committing offenses of which they have been accused only later to be exonerated (Drizin & Leo, 2004; Gudjonsson, 1992, 2003; Kassin, 1997; Kassin & Gudjonsson, 2004; http://www.innocenceproject.org/).

6. Confessions are particularly potent forms of evidence that jurors and others do not fully discount — even when they are judged to be coerced (Kassin & Neumann, 1997; Kassin & Sukel, 1997).

7. Jurors and other triers of fact have difficulty distinguishing true and false confessions (Kassin, Norwick, & Meissner, 2005) and whereas false confessions are highly counterintuitive (Levine, Kim, & Blair, 2010) and in part because these statements, as seen in the confessions of defendants who were ultimately exonerated, typically contain vivid and accurate details about the offense and victim, facts that were not in the public domain, as well as other indicia of credibility (e.g., statements of motivation, apologies and remorse, corrected errors), indicating that the innocent confessor obtained the information from leading questions or other secondary sources of information (Garrett, 2010; Appleby, Hasel, & Kassin, 2008; Kassin, 2006; Leo, 2008).
8. Videotaping of interrogations in their entirety provides an objective and accurate audio-visual record of the interrogation, provides a vehicle by which to resolve disputes about the source of non-public details in a suspect's confession, and has the potential to deter interrogators from using inappropriate tactics and deter defense attorneys from making frivolous claims of police coercion (American Bar Association, 2004; Boetig, Vinson, & Weidel, 2006; Cassell, 1996a, 1996b; The Justice Project, 2007).
9. Interrogations video recorded from a "neutral" camera perspective — one focusing attention equally on suspects and interrogators — produce less prejudiced judgments or interpretations of suspects' statements and behaviors than the more typical "suspect-focus" camera perspective that directs greater attention onto suspects than interrogators (Landström, Roos af Hjelmsäter, Granhag, 2007; Lassiter, 2002, 2010; Lassiter, Diamond, Schmidt, & Elek, 2007.

They went on to state that;

1. The findings set forth in their resolution regarding the phenomenon of false confessions are the product of established research methods that are widely accepted in the field of psychology, as evidenced by the AP-LS scientific review paper (Kassin et al., 2010) peer reviewed journals, and books that are cited in the resolution and its supporting references.
2. As a scientific and educational organization, the American Psychological Association's mission is in part to promote the application of sound research findings to advance the public welfare.

The American Psychological Association, therefore, recommended that:-

1. All custodial interviews and interrogations of felony suspects be video recorded in their entirety and with a "neutral" camera angle that focuses equally on the suspect and interrogator.

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2. Recognizing that the risk of false confession is increased with extended interrogation times, the law enforcement agencies should consider placing limits on the length of time that suspects are interrogated.
3. Law enforcement agencies, prosecutors, and the courts recognize the risks of eliciting a false confession by interrogations that involve the presentation of false evidence.
4. Police, prosecutors, and the courts recognize the risks of eliciting a false confession that involve minimization "themes" that communicate promises of leniency.
5. Those who interrogate individuals who are young (with particular attention paid to developmental level and trauma history), cognitively impaired, those with impaired mental health functioning, or in other ways are vulnerable to manipulation receive special training regarding the risk of eliciting false confessions.
6. Particularly vulnerable suspect populations, including youth, persons with developmental disabilities, and persons with mental illness, be provided special and professional protection during interrogations such as being accompanied and advised by an attorney or professional advocate.

The case of the State vs. Anselem Onyegbosi & 5 ors., Suit No. HIH/4C/2008, (reported in (2013) OTBD 13.) (before me at the Ihiala High Court) and a host of other matters, both civil and criminal, filed before me in the various jurisdictions where I presided between 1980 and 2013 presented similar situations like those in the United States which prompted the research and subsequent resolutions by the American Psychological Association referred to above.

The case of Anselem Onyegbosi will suffice for an example of the manner of obtaining statements from offenders at the police station and the reaction of the court when such statements are retracted by the maker. In that case, the prosecution relied on the confessional statements of the accused persons. The defendants/accused persons had in the said statements admitted to the police that they committed the offence charged. The police had certified the confession as having been made voluntarily. Since there was no expert or neutral person present as such position does not exist in the system, the police witness informed the court that the necessary steps were taken to ensure that the confessions were voluntary. Testifying in their defence, the accused persons retracted the said confessions as having been obtained under duress and threats. Since there exists no provisions for treating such situations under our laws, the court resorted, on the application of the defence counsel, to the English principle known as ‘judges rule’ and conducted a trial-within-trial to ascertain the voluntariness of the said statements. It was found that one of the accused was shot in the leg, according to

him, to make him confess and to instill fear into the others. This would have been unnecessary if at the point of receiving the statement from the accused there were some expert/professional, a psychologist to oversee the manner in which the statement was obtained and offer expert/professional assistant to the police and the suspect. Court's valuable time would have been saved.

In my judgment, I ruled as follows:
"Having reviewed the evidence before me and as testified to at the trial-within-trial, I find that the 2nd accused was shot in the leg in order to make him admit the offence and that it is immaterial that he was shot at Ihiala or at Awkuzu. He was shot by the police. That is enough threat to compel not only him but his co-accused to admit the offence. It may even be that they committed the offence, but that has to be proved by evidence. The only evidence against the defendants is their confessional statement. It has been held that if a confessional statement is made involuntarily, it would not be admitted, and if admitted, it should be expunged as inadmissible. When such a statement that provides corroboration for other related pieces of evidence is expunged from the records, there will be no pivot upon which the other corroborated evidence can stand and thus placing reliance upon such evidence would lead to a miscarriage of justice." Ekure v the State. (1999) 13 NWLR (pt. 635) 456, CA.

The accused persons were discharged. The offences were alleged to have been committed on the 22nd of December, 2007, the accused were charged in 2008 and the judgment was delivered on the 19th of November, 2012. (5 years). The State, police, court, accused, witnesses and indeed the society would have been spared this five wasted years have there been a trained personnel at the point of receiving the statement.

The cases of the State vs. Michael Ikokwu & 4 ors. HIH/3C/2005. (2013) OTBD 179 and the State vs Monica Iriakannu & 6 ors. HIH/8C/2005). (2013) OTBD 219 clearly demonstrate the need for the intervention or professional assistance of a psychologist both at the point of investigation, adjudication and post adjudication.
In the case of the State v Michael Ikokwu & 4 ors., Michel Ikokwu a retired military officer, his wife and children were charged with causing grievous injuries and other related offences. In the course of the trial, I observed that the said Michael Ikokwu was somehow deformed. One of his arms was shorter and disproportionate with the other and gave a clumsy appearance. The defence did not plead it, but I noticed also that he was temperamental and always prone to anger even when one would say good morning to him. Putting, therefore, a mild and friendly question across to him about his career in the armed forces he informed the court that he was injured in active service. The injury and absence of

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proper rehabilitation by the military had affected him psychologically, socially, emotionally and in his own reasoning, financially. To my mind, he would have been different with proper psychological orientation. The court was handicapped in the sense that there was no empirical basis for the court to consider his predicament. The court could not suo motu raise and consider the fact that the accused before him has some psychological and emotional challenged because there was no trained personnel to offer that expert opinion, counselling or advice either to the investigating police or the trial court. His situation was not such that a psychiatric hospital could address. I had to find him guilty and convict him as charged. It would have occasioned substantial miscarriage of justice to the injured complainants/victims, if I had held otherwise, because they were not afforded the opportunity of the expert opinion of an independent psychologist as to the state of mind of their alleged aggressor/offender. This is where the principle of Restorative Justice under the Alternative Dispute Resolution mechanism as proffered by the United Nations Office on Drug and Crime, UNODC, in collaboration with the European Union and the Department of Justice in the United States for Nigeria comes in handy. The need for ADJ/RJ will be addressed, howbeit cursorily, subsequently in this paper.

The case of the State v Monica Iriakannu & 6ors presents a different scenario from Ikokwu's case. The Iriakannu case presented a situation which bordered on the defence of involuntariness due to some alleged 'superior authority' or influence. For instance, insanity, involuntary intoxication, all proven, and action upon lawful orders, will in the appropriate circumstances provide legal defence for actions in specific cases. In the Monica Iriakannu case, Monica, the 1st accused, a self-acclaimed prophet and spiritualist owned a place of worship. The other accused persons were members of her church. She and six of her members were charged with burglary and stealing in that they broke into the house and shrine of one Godffrey Ibe at night and carted away valuables and money "under the purported influence of the 'holy spirit' during a night programme in their church.

Their defence was that they were mandated by the 'holy spirit' to destroy all shrines and idols and as such they were not liable for their actions. They led evidence to say that during the course of their vigil and prayers led by Monica, the 'spirit' entered into the 3rd accused one Monday Okonkwo and he bolted out of the church and moved straight to the house of Ibe. All the members of the church followed him and they broke in and started carting away items. Incidentally, according to their evidence, the said Monday, who led the operation, already bore a popular nickname of 'muo nso'. So muo nso literarily entered into muo nso and muo nso went on rampage.

When asked a question about freedom of worship in the Nigerian Constitution, Monica answered emphatically thus:

> "I know that there is freedom of worship but I was given instruction by the 'holy spirit' in Deuteronomy 12 from verse 1 that people who are praying should go and destroy all idols. By my calling I have the right to go and destroy all shrines and idols. I have been destroying shrines. It is always at night."

The defence which they sought is a reasonable defence under the law for situations where a person does an act involuntarily under a constituted authority, insanity or unsoundness of mind, involuntary intoxication or by reason of being a minor in age and incapable of understanding or appreciating the nature or implications of his action. (see SS. 50 – 55 of the Penal Code as applicable in the Northern States, and the related defences under the Criminal Code applicable in the Southern States.). But what I observed was a situation akin to the case of accused persons who had experienced self-induced intoxication or experienced visual or auditory hallucinations or outright willful and orchestrated intention to commit a felony. I believe that the psychologist is better equipped to offer assistant to the police and the court in situations like this, particularly where muo nso is involved. The court without expert opinion as to the state of mind of the accused persons found their action deliberate and convicted them accordingly.
Another area of major concern from my experience on the Bench is the Family Law/Matrimonial Causes/Children & Young Persons/Customary and Communal relations. The case of children and women, particularly widows, I observed with grave concern that in spite of the very elaborate and civilized provisions in the Child's Rights Act of Nigeria and the Widowhood Malpractice Prohibition Law, 2004 of Anambra State still needs very serious intervention, through counselling and sustained mental re-orientation within the judicial system and the basic environment.

In divorce and custody matters, I discovered that innocent children are subjected to psychological, emotional, social and physical torture by parents and family members who want to, as it were, tear themselves apart. Caution is thrown to the winds and the helpless children are caught in the cross fire of two foolish and uncompromising adults.

In some cases, helpless courts bring in the government social welfare office which is not adequately equipped with qualified personnel to deal with psychological problems. In a particular divorce proceeding, the wife sought to deprive her husband the custody of their only child, a male, on the ground that her husband was incapable of maintaining the child. The only ground, according to the lady and

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her lawyer was that the man, a crown prince in his community, does not have a house anywhere and still resides in the palace. He ought to have built a house elsewhere to qualify for custody. They admitted as a fact that the little boy by virtue of his birth was an heir apparent to the throne but when the court put across a question whether it was not more appropriate that the young boy should grow up in the palace and be nurtured in the customs and usages of his people, the lady and her lawyer applied for a transfer of the case to start de novo in another jurisdiction on the ground that the court was biased. The traditional ruler in question and his wife who were the grandparents of the boy and he parents-in-law of the lady seeking divorce are both university professors just like the parents of the lady. Both the lady and her husband are educated. The lady is not Igbo and common sense would demand that the young prince gross up in the culture of his people.

The problem, here, is not illiteracy but mental orientation and hatred which should not be allowed to destroy the future of an innocent juvenile. In matrimonial causes, the court has to be satisfied as to whether the parties have sought settlement amicably before coming to court for divorce proceedings to begin. It is my conviction and it is strongly recommended here that the law be amended to include provisions that where children are involved, efforts have been made to insulate them psychologically, emotionally and socially from the stress and excesses of the uncompromising adults as to allow the present situation to continue will amount to allowing child abuse which is an offence under the law. Broken homes usually take their toll on the growing children.

On the part of widows, a lot of efforts have been made by respective governments but the cases of Pauline Ada Enike vs. Augustine Awanwike & 33 ors. Suit No. AG/MISC.16/2012. (2013) OTBD 247, Oguchi v. OguchiSuit No. HID/MISC.34/2010, among many before me and a myriad of others in other jurisdictions across the country show that a lot still has to be done. In the Awanwike case, a man died and the widow would not shave her hair as it offended her religious belief and the Prohibition of Malpractice against Widows and Widowers Law 2004 of Anambra State. The community dealt with her to the extent that she had to run away from home. After some months in ‘exile’ the community sent to her to return that the matter was settled and she could live her normal life. She returned and one early morning the entire community invaded her house, waited for her to finish her morning devotion, dragged her out and forcibly shaved the hairs on her head. They had in the process damaged certain family property.

In Oguchi's case, a young man resident with his family in South Africa had returned to his home town Oba to build a house. He spent three months at home and after the house had reached an appreciable stage, he returned to South Africa, became sick after a few days and died within the next week. When his pregnant wife returned with their infant children for the burial, the family locked them up in a room upstairs, accusing the wife of killing her husband. They wrote in the service brochure that she actually killed her husband and even said so in their in their individual tributes. They announced it in the church and would not allow her to participate in the funeral ceremonies. She was not even mentioned in the service brochure as the wife of the deceased. After the ceremonies they ordered her to return to South Africa to bring home her children's school papers, her husband's property and bank books. She was in that state of incarceration for two weeks until she demanded that she needed ante natal care. They released her from their prison and let her go to seek medical help while still keeping the little children in bondage. She quickly ran to the Awka office of the International Federation of Women Lawyers, FIDA who took her to the Commissioner of Police and she and her children were rescued from the detention.

In such situations it was clearly obvious that not only the devastated women and their traumatised children needed expert care but also the offending adult communities. There appeared exists no post adjudicative psychological expert or facilities to intervene. Like I said earlier, the social welfare office in the Ministry of Women Affairs is grossly ill-equipped for such technical intervention. Therefore, while in my judgement in the two cases and other similar matters that have appeared before me, I made orders that the offending families and communities should tender apologies using the same means with which they published the damage, I usually, for obvious reasons, did not make orders for damages or costs of action against the offending party. In the Awanwike case, I ordered the traditional ruler of Awa Town to summon the entire townspeople to the town hall where unreserved apology will be tendered to the widow, a town crier will go about the town in their usual manner to repeat the apologies with a warning of future consequences on any person who will violate the woman's fundamental rights. In the Oguchi case, I ordered that the family publish another brochure and written statements, recognising the lady as the lawfully wedded wife of their son, apologizing to her in the same church where the funeral service was held, using a town crier to tender public apologies and filing a report of compliance at the palace of the traditional ruler of Oba. The two traditional rulers will respectively certify that the court orders were complied with and the records of those activities in compliance with the court orders were to be filed in court and will form part of the judgment and official records of the court.

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Those steps were quite radical and revolutionary and I waited for petitions and appeals but none came coming. I did not order costs or damages because I took cognizance of the fact that it would be more traumatic and humiliating for the families and communities to task themselves, raise money and pay to these widows who would spend the money in the same community. It would rub in so much that even without open hostility; they would deal subtly with these women and their children over a long period of time with more devastating effects so it was better to give them a soft landing. Was it legal, forensic or criminal psychology in practice in the absence of official personnel? The court surely needed such expert scientific aid to rely on for adjudicative and post judgment application.

As I had observed earlier in this presentation, because of the absence or non-provision of expert psychologists in the system, courts have had to rely on psychiatrists and mental asylum in the prisons. In a particular case while sitting at Obollo-Afor as Chief Magistrate in 1989, I had to refer a young man to Dr, Warrick Onyeama at the psychiatric hospital Enugu, to determine whether he was of a sound mind and disposition to stand trial. For five weeks Dr. Onyeama could not find out the reason why I sent the man across to the hospital and he prepared an signed a report that the man was mentally fit but before the report could be delivered to the court, the man started querying the doctor as to why he was not recognised in the hospital as to the next in command to the Nigerian military head of State and so on. He was in that state for the next three months and was only discharged after over nine months. The psychiatrist, though a medical doctor had his limitations. What the court observed was a psychological problem which needed a clinical Psychologist may be a legal psychologist not a psychiatrist.

Psychology is a practical life subject and not being an academic, the only way I can put across my findings and experience of about 47 years in public service is by practical examples. I, therefore, crave your indulgence for a few more practical.

The case of a geriatric, unrepentant, sex predator, as I chose to call him will drive home the point that there is need for an established psychological unit in the court system. This 91 year old man was banished or ostracised from the Ogbakuba community in Ogbaru Local Government Area of Anambra State for being in the habit of waylaying and raping young married women in the farm at Ogbakuba which according to the community was an abomination. On return to his home town Okija, he brought an action before me claiming damages against the Ogbakuba people for defamation of character. He did not see anything wrong in what he did at Ogbakuba. His only defence to his action was that in his native town if he raped another man's wife, the only remedy according to Okija custom was that he would offer some tubers of yam and kola nuts to the husband of the raped

woman and that man was at liberty to retaliate and rape the wife of the offender. He was unrepentant and I couldn't fashion out whether it was by reason of his age, senile dementia or some other psychology or philosophy that informed his reasoning and actions. There was no help by way of expert on my staff list and he was surely not a psychiatric case.

One other situation in which from my personal experience and hind sight, I believe would have been better handled had there been a forensic psychologist or criminal psychologist available to the police and the Kano State Ministry of Justice in 1979 is the celebrated case of Nafiu Rabiu Vs the State. [1980] 8-11 S C (Reprint) 85.

I was, as a Youth Corper in 1979, in the team, led by the Director of Public Prosecutions Kano State, which started the case before I was appointed a Magistrate in 1980. The evidence of the forensic scientists for the prosecution and the defence was only to determine the percentage of alcohol content in the blood of the deceased lady, wife of the accused, and the level at which it could be only intoxicating, comatose or lethal since the defence was that the lady died of asphyxiation through alcohol ingestion whereas the case of the prosecution was death by asphyxiation through strangulation. The presence of a criminal, forensic or legal psychologist would have led to a proper profiling of the evidence available at the time. Hajiya Alkali, an aunt of the deceased who testified as to the state of the body at the time it was found stated that the body had been cleaned up to hide the true state. To prove that, she said she had to remove the underwear/pant she found on the deceased because it was against Islamic injunction for married woman to wear such. An earlier witness had testified that the accused removed some soiled bedsheets and clothes from the scene earlier in the day. There was no expert to link up.

There could have been proper scientific profiling if the facility were available, like in the South African case of Oscar Pistorious. Secondly, that piece of evidence affected my reasoning in some of the cases of indecent assault and related sexual offences which came before me between 1980 and 1988 when I left that jurisdiction. I had no tutorial, so to say or orientation, as to effect of absence of underwear in women on the male offenders who were brought before me. That lacuna could have been filled only by law related psychology.

Having considered the definitions and the expected role of the different classes of psychologists, one major area of interest to the field of psychology and the law or the criminal justice delivery system is the principle or objective behind punishment of offenders. There are four commonly recognised UTILITARIAN

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OBJECTS OF PUNISHMENT to wit:- prohibitive, preventive, educative and rehabilitative. Some legal minds have referred to these principles as, deterrence, incapacitation, rehabilitation and retributive. (Justice M. A. Owoade. JCA. *Sentencing: Guiding Principles and Current Trends*. [2009]2 NJI L.J. 1, at p. 5).

Under prohibitive/deterrence, the aim is to reduce further crime by the threat of punishment. Two classes of prospective offenders are targeted here; i. Specific (individual or special: those who have directly experienced punishment for a crime or crimes they committed in the past) or ii. General (those who have not experienced punishment but are deterred from crime by the threat of punishment).

In the second case, preventive/incapacitation aims at dealing with offenders in such a way to make them incapable of offending for substantial periods of time. Lawton L.J. in the case of *Sargent* (1975) 60 CV. APP. R. 74acknowledged that;

"There are some offenders for who neither deterrence nor rehabilitation works. They will go on committing crimes as long as they are able to do so. In those cases the only protection which the public has is that such persons should be locked up for a long period."

To many psychologists and legal scholars, particularly in some fundamentalist jurisdictions, imprisonment, deportation, severing of limbs and death penalty are acceptable and standard incapacitative punishments despite the fact that there are formidable humanitarian arguments in the wider world against such irreversible measures.

Rehabilitation has the sole purpose of reforming the offender with the aim of securing conformity, not through fear but through some inner positive motivation on the part of the individual. According to Wasik et al; *Criminal Justice; Text and Materials*; (Longmans). Pp 536 – 537,

> "the process is aimed at improving the offender's character so that he is less inclined to commit offences again even when he can do so without fear of the penalty."

Finally, retributive theory looks back to the crime and punishes because of the crime. The principles of justice at the heart of retribution are that punishment is deserved when morally responsible persons are guilty of wilfully violating the moral order as articulated in the laws of the society in which they claim membership. (see Owoade JCA supra). These principles are the main theories upon which an adjudicating officer considers punishment and conviction. The role

of the psychologist in assisting or aiding the court to apply these principles have been addressed to some extent in the foregoing discussion. But more elaborate provision and participation of trained personnel is indispensable.

The role of the psychologist in the probation of offenders following judicial processes is also worthy of mention.

Sections 396 – 409 of the Administration of Criminal Justice Law, 2010 of Anambra State make elaborate provisions for probation, incorporating some of the ideals of the Probation of Offenders Law, the erstwhile Children and Young Persons Laws and other legislations regarding borstal institutions, remand homes and social welfare facilities.

Section 396. where any person is charged before a court with an offence punishable by such court, the court thinks that the charge is proved but is of the opinion that having regard to character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, it is expedient to inflict any punishment or any other than nominal punishment or that it is expedient to release the offender on probation the court may without proceeding to conviction make an order:-

(a) Dismissing the charge, or
(b) Discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour for a period not less than one year and not exceeding three years.

S. 399. Probation Orders. The court may order the offender to be under the supervision of a named probation officer.

S. 400. Content of Recognizance. A recognizance under this chapter may contain such additional conditions with respect to residence, abstention n form intoxicating liquor and any other matters as the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences.

S. 403. Provides for the duties of the probation officer. Receiving and generating reports on the person at scheduled intervals, to see that the offender observes the conditions of his recognizance, to advise, assist and befriend the offender and endeavour to make him gainfully employed.

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It would be appropriate, here, to reproduce, in extensor, the views of Hon. Justice M. A. Owoade on the probation of offenders. See Owoade; Sentencing: Guiding Principles and Current Trends.[2009] NJI L.J. 1 at pp. 21-23.

"Probation is a method of dealing with specially selected offenders consisting of the traditional suspension of punishment while the offender is placed under personal supervision and given guidance or treatment or could be described as the submission of an offender while at liberty to a period of supervision by a social case worker who is an officer of the court.".

See the Report of the United Nations Committee on 'Probation and Related Measures' (1951). Cited in Ukatta F. I. E. "Sentencing and Probation". Judicial Lectures: Continuing Education for the Judiciary. (1992) NJI. 188 at 196. See also A. A. Adeyemi; Sentencing: Principles and Practice. 'Administration of Justice in Nigeria; Sentencing', Chapter 5, Law Development and Administration in Nigeria. Lagos (1990). Yemi Osinbajo and Awa Kalu. Editors. Vol. 157 .p 109.

Apart from the specific provisions of the law on how and when to make a probation order, there are no other provisions as to the quality or profession/specialization of the said probation officer. In most of the cases on record, family members and social welfare workers have been used as probation officers. No reference is made to professional psychologists of any specialisation. But it is clear that in making the order and in the actual process of the probation, assessments and monitoring are the main issues. Who advises or assists the court in determining state of the offender and what specific order to be made in any particular circumstance and what reports to expect from such persons or institutions is not mentioned in any law.

One other critical issue is the psychological impact of judicial orders on family members and whether such orders, though rightly and lawfully made actually meet the justice and aspirations of the family of the offenders, the offended victims and the society.

For instance if someone steals money from an individual and goes to jail, the owner of the money may not necessarily get his money back, nor may he gain security assurances that the thief will not commit another crime against him once he is freed. The question whether a prison sentence will actually serve the best interests of the parties is answered by the celebrated case of Nigerian Professor who sprayed one of his sons with pepper in the United States of America.

“The Nigerian Professor, Festus Oguhebe, who pepper-sprayed one of his sons as a form of punishment was sentenced to serve two years injail by a United States Court for child abuse despite emotional pleas by his two children and an ex-wife. Hinds County Circuit Judge L. Breland Hilburn on Monday sentenced Festus Oguhebe to five years in prison with three years suspended on his no-contest plea to one count of child abuse.

“I know how went overboard in his punishment, but he loves us. If he is in jail, that would totally mess me up so much,” said 16 - year old Anna Oguhebe, who will be graduating from High School in the spring. I want my dad to be there when I graduate, not in jail”.

A native of Nigeria, Ogubebe was accused of abusing his 11 year old son by "placing him in a bathtub, then putting hot pepper juice in his eyes, on his penis and buttocks; and also by tying his hands behind his back and covering his body with ants", according to court records.

Oguhebe also was accused of abusing his son by 'whipping and striking the child in such a manner as to cause serious bodily injury”, according to records filed by Hinds Assistant District Attorney Jacqueline Purnell.

Oguehebe, who has six children with his ex-wife, wiped tears when his children spoke of their love and respect for him; urging the Judge to spare their father jail time. "Give him counseling, extensive counseling. That would be better than jail,” said Anna Oguhebe.

Anna and her brother, Festus Jr., also a High School senior, said their father may have gone overboard in his punishment, but his discipline and guidance as a father have kept them out of the trouble they see their peers getting into.

Mary Oguhebe had repeatedly reported abuse of the children by their father to the Hinds County Sheriff’s Department, a department spokesman told the Clarion-Ledger in March, 2005.

While on the witness stand during his sentencing hearing, Oguhebe apologized to his children. “I’m very, very sorry. I say forgive me. It won’t happen again ..... I have learnt my lesson", he said.

Without further comments, considering the children of separated parents and who are still in school, you are invited, as psychologists, parents and educators to determine whether the punishment in this case, which by all standards is just

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under the law, meets the best interest of the parties.

The decision in the Oguhebe case and similar matters, brings us to the introduction of the Alternative Dispute Resolution system ADR, which the UNODC, the champion of modern ADR, had acknowledged as a reintroduction or resurrection of our primordial dispute settling mechanism. One very vital aspect of the modern ADR which is Restorative Justice RJ is founded upon three basic principles;

1. The primary determinants of justice are the interests of the victim, the community and the Offender.
2. Punitive actions do not always serve those interests best.
3. Crimes are against individuals and, to some extent, communities, not against the state or the Law. (UNODC, Training Manual on Alternative Dispute Resolution and Restorative Justice. Sponsored by the European Union p.16).

The philosophical roots of RJ, which also encompass the philosophy of the victim and the philosophy of the community and government, are based on the theories that;

1. Humans are capable of reform;
2. Offenders should have the chance to make amends for their crimes to victims and take responsibility for their offences;
3. If an offender does make amends, then he or she should be reintegrated into the society;
4. Moreover, offenders must also be protected from retribution so that society as a whole does not suffer from norms of revenge-taking.

Following from the foregoing, the philosophy of the victims holds that;

1. Victims need a chance to confront offenders directly.
2. Victims should have some say in the response to the crime which they have suffered, generating options for the offender to make amends, and pointing toward forgiveness.

Psychologically, this affords the victim two important experiences;

i. release of anger, fear and pain inflicted by the offender.
ii. perhaps an apology from the offender to the victim.

Both psychology and medicine are showing increasing evidence of the important mental and physical effects that apology can have both for the victim and the perpetrator of crimes.

On the part of the government and the community, RJ believes that community should also have a chance to participate in the discussion of crimes committed against members of the community. While government's role is to preserve a just public order, the community's role will be to build and maintain a just peace which is daily behavior. Simply put, the distinction places primary responsibility for legal system with the state, but acknowledges that the community must live with the results of any judicial action. The community must face the day-to-day reality of how the victim, the offender and community will live with one another, and as such, the community must play a role in responding to crimes. The need, therefore, for a strong, well staffed and properly motivated department of psychology in the judicial system and in the social welfare ministries of the government cannot be over-emphasized.

In summing up this presentation, we must now look at how the assigned role of the judiciary affects or impacts on the operatives psychologically and eventually manifests physically and or physiologically. This syndrome or situation is known as Compassion fatigue.

The average Nigerian Judge, by whatever name called and at whatever level, on daily basis finds himself balancing probabilities, circumstances and situations, without the aid of a psychologist, in order to come to sound decisions and just judgment. This puts extra pressure on him with the resultant effect that the syndrome known as COMPASSION FATIGUE sets in and takes control of his psyche, emotions, health and overall approach to life, leisure, labour and general living.

Judge Michael A. Town of the Criminal Division of the Circuit Court in Honolulu, Hawaii, and an expert on subjects such as the unified family court, domestic violence, alternative dispute resolution, therapeutic, preventative, and restorative justice, in collaboration with Dr. Peter Jaffee, conducted a survey of over 500 America Judges on this subject and reported their findings published in the fall 2003 issue of the Juvenile and Family Court Journal under the caption of compassion fatigue and vicarious trauma in judges.

According to the report, and as a matter of fact, judges hear a variety of cases which are often emotional, sad, and at times, profoundly tragic. These cases do take their toll on us and can also impact our families and friends. Repeatedly hearing cases involving child custody, divorce, child abuse, mental illness, homicide, and domestic violence do affect judges in many ways. At times these cases resonate within us and can wear us out. Some judges, however, thrive on the energy of the courtroom and the issues and emotions generated. These judges

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serve for many years and find being a judge not only a true "calling" but engaging and rewarding. But that's not all there is to it.

This syndrome, compassion fatigue, is a real and palpable phenomenon for judges. And, the question that has always been asked by analysts and researchers in judicial administration is this; 'if it is so for those of us who wear the black robes and are surrounded by the accoutrements of our office, how must it be for the advocates/lawyers, crime detective/police operatives, and other court staff? What is it like for the broader community members who participate as litigants and witnesses and bear the very same evidence?

Judge Michael Town's report is true not only in America but also here in Nigeria that compassion fatigue in judges is the result of vicariously becoming worn down and emotionally weary from hearing about and dealing with situations where people have been physically and emotionally injured, hospitalized, and all too often killed. These are litigants who suffer "on our watch," so to speak. These cases have a way of creeping into our lives, and that is only natural if the judge cares about and is engaged in his or her work. In thinking about the subject, I have come to understand that these cases affect us in many ways. For me, the volume and nature of the cases can sometimes be overwhelming. Indeed, even one case can be devastating and most of my colleagues can recall a profoundly tragic individual case even though it occurred many years ago.

The symptoms of compassion fatigue in judges, according to Judge Town, are fairly predictable. Some judges reported internalized symptoms including sleeplessness, eating disturbances, increased anxiety, depression, and hyper vigilance. Others reported external symptoms including becoming increasingly angry, irritable, and intolerant of others. Some judges reported increased fearfulness and security consciousness, the inability to make prompt decisions (procrastination), and increased difficulty focusing or concentrating. Some judges felt quite ambivalent and, therefore, anxious about critical decisions that were close calls. While most people experience one or more of these emotions or behaviours at some point in their lives, the frequency and acuity of the symptoms seem to elevate when we are responsible for the lives of others. Compassion fatigue seems to peak at the seven-year mark during the judge's tenure, according to Judge Town. I personally confirm this. Efforts, therefore, to address this well before the seven-year mark are obviously in order.

As has been said earlier, this compassion fatigue also affects the police, lawyers and court staff who are engaged in active judicial process of investigation, processing, collation and prosecution of cases in the courts. In my valedictory

speech on my retirement from judicial service, after 47 unbroken years in the public service, I addressed the effect of the deplorable working conditions and the nature of the duties on the judicial staff and the police. They bear to a large extent, the same burden of the matters that come before the judge at different stages. For the police, the raw evidence before the trial and the judicial staff, the same experience as the judge in the court room with the pressure associated with the actual consideration of the evidence and adjudication over the contending issues.

One of the effects of those inhuman working conditions on these inferior operatives and their other experiences which I have mentioned here, is what I have termed institutionalised corruption and indiscipline. They can only be addressed kin the same manner as the compassion fatigue in judges. The psychologist has a major role to play if employed to do so.

For the judges, the government of Nigeria recognises the fact that they need some kind of attention or welfare package to address the problem and provided, though unwittingly for personal and special assistants and medical services in the law which stipulated their remuneration and allowances. But no efforts have been made to implement them since 1999.

Having made these expositions, I guess I have to conclude the discussion by reverting to the resolutions of the American Psychological Association and their recommendations referred to earlier in this paper and submit that it is imperative that Psychologists in Nigeria should adopt same and adapt to our local circumstances and then recommend to the appropriate authorities for implementation.

My experience, right from my first day in the Ministry of Justice of Eastern Region of Nigeria, in September, 1966, my time as a Prison Chaplain (a Licensed Lar-Reader of the Anglican Diocese of Enugu) in Enugu between 1971 and 1975, my tenure as a judicial officer on the lower and higher bench 1980 to 2013 and the period in between as a Deputy Chief Registrar during which I supervised the execution – by hanging and the firing squad of condemned armed robbers-, I found that although there were glimpses or what would appear to be recognition of the role of the psychologist of whatever specialization in our statute books and regulations of our courts, the PSYCHOLOGISTS were prominent in their conspicuous absence. Those on the death row and even officers charged with various roles in the process of execution, who needed the psychologist, had none at hand to meet their emotional and psychological needs. As there are no provisions for the psychologist in the prison service and the police training colleges and formations, the pre and post adjudicative role of the psychologist,

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which is a vital aspect of justice delivery cannot be fully realised. The Udoji Public Service Review Commission in 1974 recommended that as part of the training of Magistrates, their orientation should not *"only be by way of reading and learning but also to include visits to penal institutions by newly appointed judges and magistrates"* for according to them, *"it was desirable for members of the bench to cultivate the habit of visiting penal institutions periodically."*The reasoning here, is that *"it should cease to be possible for people to be sent to prisons by judges who have never been inside of one*". This recommendation by Udoji influenced the passage of the law which authorised Chief Judges to conduct prison visits and jail delivery exercises. Regrettably, at those exercises, where the opinion of experts are usually considered in dealing with the inmates, the psychologist is absent because they are not provided for.

It is therefore, suggested, and I strongly recommend that there should be a strong synergy between the law faculties, psychology departments and the Council for Legal Education to fashion out a curriculum of study which will meet the accreditation standards of the National Universities Commission and develop the field of Psychology and Law as a core subject for both law and psychology students.

The essence is to achieve the much desired speedy and effective dispensation justice as projected by John Miltonin his speech to the Parliament of England in 1644, the Aeropagitica

> *"for this is not the liberty which we can hope, that let no grievance ever should arise in the commonwealth, that let no man in this world expect; but when complaints are freely heard, deeply consider'd and speedily reform'd, then is the utmost bound of civil liberty attain'd that wise men look for".*

Speedy dispensation of justice can only be achieved when there is a psychological balance for the accused/defendant, claimant/plaintiff/complainant, the judge, the judicial and law enforcement operatives and the environment/society at large.

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Biography

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