Clinical v. Forensic Psychology: Fundamental Differences

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What is Forensic

* The application of the scientific principles of psychology to legal questions, legal situations and legal problems.

What is Clinical

* The application of the scientific principles of psychology to human behavior and relationships.

Forensic v. Clinical

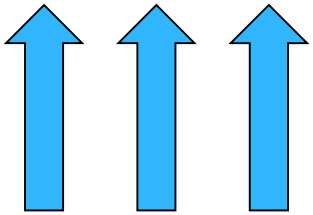
* Is there overlap?
  * From a content perspective, yes.
    * The body of knowledge that is psychology is relevant
    * The science of psychology is relevant
    * Psychological theories or normal and abnormal behavior are relevant
  * From a pragmatic perspective, not as much.
    * No Patient
    * No Diagnosis
    * No Treatment
    * No Intervention
    * No doctor-patient privilege
    * There may be attorney-client work product privilege
  * The work is not used to "help" people. It is used to assist in a legal situation or outcome.

* Forensic psychologists need to be aware of evidentiary rules in their jurisdiction.
* Forensic psychologists need to be aware of laws/regulations in their jurisdiction.
* Forensic psychologists need to be aware of the family code in their jurisdiction.
* Forensic psychologists need to be aware of local court rules in their jurisdiction.
* Clinicians? Not so much. Doesn't apply!

ASSESSMENT VS TREATMENT

Assessment

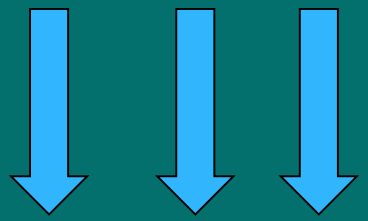
"Bottom up" approach.



You do not believe anything and seek information to build up a confirmation

Therapy

"Top down" approach.



You believe everything but seek to feed back contradictions

Forensic Psychology is "New"

* Clinical psychology traces its roots to the 1800's.
* Forensic psychology, as an organized field, is at most 30 years old depending on who you ask.
* Formal organized training in forensic psychology is difficult to find. Currently, there are no more than a dozen, if that many, programs that train forensic psychology specifically. None train specifically in family law forensic psychology.

* It is common for psychologists to believe that forensic psychology is simply the application of clinical psychology to legal situations.

* But this means using clinical thinking/reasoning in legal situations. This is inappropriate and can lead to inaccurate, misleading, harmful outcomes.

* It also involves different concepts of client, confidentiality, duty and what it means to "help".

It Is About The Evidence!

* Just because a witness is an expert in his/her field does not mean that the testimony offered is expert testimony.
* In order for testimony to be expert testimony, it must be proffered by an expert and it must meet criteria for scientific expert testimony.
* Even though a witness may be qualified as an expert witness, this does not mean that what is said is necessarily expert testimony.
* It is only expert testimony if it meets established criteria.

Psychology as Science

* Reliability:
  * Is the observation, test score, inference repeatable? If observed again, would the same thing be seen again?
    * Various types of reliability exist
      Test/Rest
      Split Half
      Inter-Rater

* Validity:
  * Does the test/construct/observation measure or assess what it is supposed to measure or assess?
    * Major issue with psychological tests
    * Often what attorneys and Courts think of as "reliable" data
    * Various types exist
      * Construct validity
      * Predictive validity
      * Criterion-related validity
        * NOTE: Courts often think of something as "valid" if it is "reliable". In psychology, these are separate concepts.

Critical Differences Between Forensic and Clinical Psychology

* Voluntary v. Involuntary
  * Individuals being assessed in a forensic context are not there voluntarily.
  * They cannot consent.
  * They can only assent.

* Who is the client?
  * In clinical work, the client is the individual or family or couple. Responsibility runs to the individual, family our couple.
  * In forensic work, the client is the Court. Thus, the individual or family being assessed is NOT the client! Responsibility runs to the Court.

* Nature of the Data
  * Clinical data can be subjective, intuitive, idiosyncratic. The data is under the control of the individual client)
  * Forensic data are objective, empirical, subject to verification, subject to discovery, not under the control of the individual.

* Knowledge of Evidentiary Standards, Law, Procedural Rules.
  * In clinical work rules of evidence, procedural rules are irrelevant. Legal knowledge is with regard to privacy, mandated reporting, etc.
  * In forensic work, the practitioner must know a good deal of relevant law, local rules, procedural standards, and rules of evidence as it applies to scientific expert witness testimony.

* The Nature of Hypothesis Testing
  * In clinical work, hypotheses are generated with the client and in an attempt to help the client. They are tested/evaluated using subjective data, objective data, client feedback and agreement.
  * In forensic work, hypotheses are generated by the psychologist, the evaluatee is likely unaware of the hypotheses. They are tested using objective, empirical data and not subject to client feedback and agreement.

* Privacy/Confidentiality
  * In clinical work, with certain specific and very limited exceptions, the work is entirely confidential. The client, who is the patient, owns the data and controls the data.
  * In forensic work, there is no confidentiality or privacy. Everything is transparent, discoverable. The evaluatee does not own control over the data or its use.

* Control Over The Use of the Data
  * In clinical work, the client has control over how the data is used, interpreted, understood and applied.
  * In forensic work, the evaluatee has no control over how he data is used, interpreted, understood, applied.

* Reliability/Validity of Data
  * In clinical work, subjectivity reigns. If something is true to someone, it is true. Concerns over reliability/validity of data are typically not a consideration.
  * In forensic work, objectivity is the order of the day. Truth (or an approximation to truth), is determined by conformity to objective data. Reliability/validity of data is properly a central consideration.

* Expert scientific testimony is helpful to the trier of fact if it is both reliable and valid.
* To help assure that such testimony is reliable and valid, standards of admissibility of expert testimony have evolved.

EXPERT SCIENTIFIC TESTIMONY

* Empirical testing: the theory or technique must be falsifiable, refutable, and testable.
* Subjected to peer review and publication in refereed journals.
* Known or potential error rate.
* The existence and maintenance of standards and controls concerning its operation.
* Degree to which the theory and technique is generally accepted by a relevant scientific community.

* It must be based and grounded in sound science.
* Consensus must be drawn from a typical cross section of the relevant, qualified scientific community.
* Any witness testifying must be properly qualified as an expert on the subject
* The proponent of the evidence must demonstrate that the correct scientific procedures were used in the particular case.

Characteristics of Competent Expert Scientific Testimony

* The testimony is based upon sufficient facts or data
* The testimony is the product of reliable principles and methods, and
* The witness has applied the principles and methods reliably to the facts of the case.
* The witness is a qualified expert in his/her field.
* The witness is neutral with regard to case outcome and has not engaged in behavior or activities that could create the perception of bias.