

INSTRUCTOR'S MANUAL

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Forensic Psychology

Second Edition

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Contents

<u>Preface</u>	<u>8</u>
<u>1 An Introduction to Forensic Psychology</u>	<u>9</u>
LEARNING OBJECTIVES	9
OUTLINE	9
What is Forensic Psychology?	9
The Roles of a Forensic Psychologist	9
The Relationship Between Psychology and Law	9
The History of Forensic Psychology	10
Psychological Theories of Crime	10
Modern-Day Debates: Psychological Experts in Court	10
SUGGESTED LECTURE ACTIVITIES	11
SUGGESTED READINGS	12
SUMMARY OF COURT CASES	12
<u>2 Police Psychology</u>	<u>17</u>
LEARNING OBJECTIVES	17
OUTLINE	17
Police Selection	17
The Police Selection Process	17
The Validity of Police Selection Instruments	18
Police Discretion	19
Police Stress	20
SUGGESTED LECTURE ACTIVITIES	20
SUGGESTED READINGS	21
SUMMARY OF COURT CASES	21
<u>3 The Psychology of Police Investigations</u>	<u>23</u>
LEARNING OBJECTIVES	23
OUTLINE	23
Police Interrogations	23
The Reid Model of Interrogation	23
Interrogation Practices and the Courts	24
False Confessions	25

Criminal Profiling	26
Types of Profiling Methods	27
The Validity of Criminal Profiling	27
Geographic Profiling	28
Racial Profiling	28
SUGGESTED LECTURE ACTIVITIES	29
SUGGESTED READINGS	29
SUGGESTED VIDEOS	30
SUMMARY OF COURT CASES	30
4 Deception	34
<hr/>	
LEARNING OBJECTIVES	34
OUTLINE	34
The Polygraph Technique	34
Types of Polygraph Tests	34
Validity of Polygraph Techniques	35
Admissibility of Polygraph Evidence	36
Brain-Based Polygraph Techniques	36
Vocal and Nonverbal Behaviour Cues to Lying	37
Are Some People Better at Detecting Deception?	37
Deception in Witnesses and Children	37
Assessment of Malingering and Deception	38
Explanatory Models of Malingering	38
How to Study Malingering	38
Assessment Methods to Detect Malingered Psychosis	39
Malingered Amnesia	39
SUGGESTED LECTURE ACTIVITIES	40
SUGGESTED READINGS	41
SUMMARY OF COURT CASES	41
5 Eyewitness Testimony	44
<hr/>	
LEARNING OBJECTIVES	44
OUTLINE	44
The Role of Memory	44
How Do We Study Eyewitness Issues?	44
Interviewing Eyewitnesses	45
Procedures That Help Police Interview Eyewitnesses	46
Recall Memory Following a Long Delay	47
Recall of the Culprit	47
Lineup Identification	48

Voice Identification	49
Estimator Variables	49
Expert Testimony on Eyewitness Issues	50
Public Policy Issues and Guidelines	50
SUGGESTED LECTURE ACTIVITIES	50
SUGGESTED READINGS	51
SUGGESTED VIDEOS	52
SUMMARY OF COURT CASES	52
6 Child Victims and Witnesses	55
<hr/>	
LEARNING OBJECTIVES	55
OUTLINE	55
History of Child Witnesses	55
Accuracy of Child Witness Reports	55
Techniques for Interviewing Children	56
Describing the Culprit	56
Testifying in Court	57
Child Maltreatment	57
Custody and Access	58
SUGGESTED LECTURE ACTIVITIES	59
SUGGESTED READINGS	60
SUMMARY OF COURT CASES	60
7 Juries: Fact Finders	62
<hr/>	
LEARNING OBJECTIVES	62
OUTLINE	62
The Cases Heard by Juries	62
Jury Selection	62
Characteristics and Responsibilities of Juries in Canada	63
Jury Functions	64
How Do We Study Juror and Jury Behaviour?	64
Reaching a Verdict	64
Jury Decision-Making Models	65
Deliberations and the Final Verdict	65
Predicting Verdicts	66
SUGGESTED LECTURE ACTIVITIES	67
SUGGESTED READINGS	68
SUGGESTED VIDEOS	68
SUMMARY OF COURT CASES	68

8	<u>The Role of Mental Illness in Court</u>	71
	LEARNING OBJECTIVES	71
	OUTLINE	71
	Fitness to Stand Trial	71
	Fitness Instruments	71
	Distinguishing Between Fit and Unfit Defendants	72
	Mental State at Time of Offence	72
	Raising the Issue of Insanity	72
	Automatism	73
	Defendants with Mental Disorders	73
	Mental Health Courts	74
	SUGGESTED LECTURE ACTIVITIES	74
	SUGGESTED READINGS	75
	SUMMARY OF COURT CASES	75
9	<u>Sentencing and Parole in Canada: Practices and Public Opinions</u>	79
	LEARNING OBJECTIVES	79
	OUTLINE	79
	The Structure of the Canadian Court System	79
	The Purposes of Sentencing	79
	The Principles of Sentencing	80
	Sentencing Options in Canada	80
	Sentencing Disparity	81
	The Death Penalty in Canada	81
	What Works in Offender Treatment?	82
	Parole in Canada	82
	Public Attitudes Toward Sentencing and Parole	83
	SUGGESTED LECTURE ACTIVITIES	83
	SUGGESTED READINGS	84
	SUGGESTED VIDEOS	84
10	<u>Domestic Violence and Sexual Offenders</u>	85
	LEARNING OBJECTIVES	85
	OUTLINE	85
	Domestic Violence	85
	Intimate Partners: A Risky Relationship	85
	Why Do Battered Women Stay?	85

A Heterogeneous Population: Typologies of Male Batterers	86
Criminal Justice Response	86
Does Treatment of Male Batterers Work?	86
Sexual Offenders	86
Rape Myths	86
Effects of Rape	87
Rapist and Child Molester Typologies	87
Theories of Sexual Aggression	87
Adolescent and Female Sexual Offenders	87
Assessment and Treatment of Sexual Offenders	88
Effectiveness of Psychological Treatment of Sexual Offenders	88
SUGGESTED LECTURE ACTIVITIES	88
SUGGESTED READINGS	88
SUGGESTED VIDEOS	89
11 Homicidal and Psychopathic Offenders	90
<hr/>	
LEARNING OBJECTIVES	90
OUTLINE	90
Homicidal Offenders	90
Bimodal Classification of Homicide	91
Multiple Murder: What is Known	91
Serial Murderers: The Ultimate Predator	92
Serial Murderers: Why Do They Do It?	92
Typologies of Serial Murderers	92
Mass Murderers	93
The Psychopath	93
Psychopathy and Treatment	94
Psychopathy in Youth	94
Psychopathy: Nature versus Nurture?	94
Psychopathy and Law Enforcement	95
Cognitive and Affective Models of Psychopathy	95
SUGGESTED LECTURE ACTIVITIES	95
SUGGESTED READINGS	96
SUMMARY OF COURT CASES	97
12 Risk Assessment	98
<hr/>	
LEARNING OBJECTIVES	98
OUTLINE	98
What Is Risk Assessment?	98
Risk Assessments: When Are They Conducted?	98

Types of Prediction Outcomes	99
A History of Risk Assessment	99
Methodological Issues	99
Judgment Error and Biases	99
Approaches to the Assessment of Risk	99
Types of Predictors	100
Important Risk Factors	100
Risk Assessment Instruments and Predictive Accuracy	100
Can We Predict Specific Types of Violence?	101
Current Issues	101
SUGGESTED LECTURE ACTIVITIES	101
SUGGESTED READINGS	102
SUMMARY OF COURT CASES	103
13 <u>Assessment and Treatment of Young, Female, and Aboriginal Offenders</u>	106
LEARNING OBJECTIVES	106
OUTLINE	106
Young Offenders: Historical Overview	106
Youth Crime Rates	107
Assessment of Young Offenders	107
Trajectories of Youthful Offenders	107
Theories to Explain Antisocial Behaviour	107
Risk Factors	107
Protective Factors	108
Treatment	108
Female Offenders	108
Battered Women Who Kill	108
Treatment	109
Aboriginal Offenders	109
Risk Factors	109
Recidivism	109
Treatment	109
SUGGESTED LECTURE ACTIVITIES	110
SUGGESTED READINGS	111
SUGGESTED VIDEOS	111
SUMMARY OF COURT CASES	111
CASES CITED AND LEGISLATION	113
REFERENCES	115

Preface

As instructors ourselves, we appreciate the need for supplemental materials to support a textbook. We wanted to provide these supplemental materials for use with our forensic textbook, 2nd edition. We wanted to ensure that instructors had supplements to make their course a success. We hope that these supplements will offer you suggestions and ideas to enrich the student experience in the classroom. We have decided to include the supplements that we find most useful when teaching. We hope that you too will find that these supplements support your teaching objectives.

We value your input and look forward to hearing about your experiences with the book and supplements. We hope that you will provide us with your feedback and suggestions so that we can continue to revise these materials in order to offer you the most useful and supportive information. Good luck with your course.

SUPPLEMENTS

Instructor's Manual. The instructor's manual is a comprehensive resource that provides chapter outlines, class activities, and summaries of select cases cited. We hope you will use the textbook and instructor's manual as a foundation to build on in the classroom lecture.

Test Item File. The test bank offered in Microsoft Word format, contains multiple choice and short answer questions. Each question is classified according to difficulty level and is keyed to the appropriate page number in the textbook. We have added a number of new questions to reflect the revised content.

PowerPoint Presentations. PowerPoint slides highlight the key concepts in each chapter of the text.

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CHAPTER 1

An Introduction to Forensic Psychology

LEARNING OBJECTIVES

- Provide a narrow and broad definition of forensic psychology.
- Describe the differences between clinical and experimental forensic psychology.
- List the three ways in which psychology and the law can interact.
- Describe three major psychological theories of crime.
- List the criteria used in Canada to decide when expert testimony is admissible.

OUTLINE

What is Forensic Psychology?

- Forensic psychology can be defined using either a narrow definition or a broad definition. A narrow definition is precise and tends to focus on application, yet it excludes aspects of the profession. In contrast, a broad definition attempts to include all aspects of the discipline, focusing on application as well as the research needed to inform applied practice.
- Generally, *forensic psychology* can be defined as a field of psychology that deals with all aspects of human behaviour as it relates to the law or legal system.

The Roles of a Forensic Psychologist

- *Clinical forensic psychologists* focus on mental health issues as they apply to the legal system. They may engage in both research and practice in a variety of settings. Qualifications for a licence to practice clinical forensic psychology varies across Canada, however at least a Master's degree in psychology is required in each Province.
- *Experimental forensic psychologists* engage in research regarding human behaviour in relation to the legal system. Qualifications involve graduate training in psychology and research in the forensic area.
- In contrast, a legal scholar may focus on analyses of mental health legislation and psychologically-based legal movements. Qualifications to be a legal scholar include a Ph.D. in psychology and typically an L.L.B. in law.

The Relationship Between Psychology and Law

- Psychology and the law can interact in three ways: psychology *and* the law, psychology *in* the law, and psychology *of* the law (Haney, 1980).
 - *Psychology and the law* refers to examining the operation of the legal system from a psychological perspective. For example, a psychologist may conduct a laboratory study to determine whether a particular type of police line up results in accurate identifications.

- *Psychology in the law* is the use of psychological knowledge in the legal system as it currently operates. For example, a parole board may use a psychologist's report when deciding whether to release an offender.
- *Psychology of the law* refers to the application of psychology to the study of the law. For example, a psychologist might attempt to determine why some people obey the law while other people do not.

The History of Forensic Psychology

- The history of forensic psychology dates back to the late 1800s. Early research in the area centered on eyewitness testimony and suggestibility.
- Around the same time, psychologists around the world began providing expert testimony surrounding issues such as the effect of pretrial publicity and the susceptibility of children to suggestion, often making reference to experimental research.
- Some suggest forensic psychology arrived in North America with Munsterberg's *On the Witness Stand* (1908). In his book, Munsterberg detailed ways that psychology could assist the legal system. However, a psychologist did not provide expert testimony in North America until 1921. Classic U.S. court cases included *Brown v. Board of Education* (1954) and *Jenkins v. United States* (1962).

Psychological Theories of Crime

- Many early psychological theories began to emerge after the post-war period.
 - *Psychodynamic theories* emphasize the dynamic internal forces and early childhood experiences of the offender. For example, Bowlby's (1944) *theory of maternal deprivation* suggests that antisocial behaviour resulted from early separation of a child from his or her mother.
 - *Learning theories* highlight the role of reinforcement in criminal activity. For example, Bandura (1973) postulates in his *social learning theory* that crime resulted from direct and indirect reinforcement for antisocial behaviour.
 - *Personality theories* emphasize differences between the personalities of offenders and law abiding citizens. For example, Eysenck's (1977) *biosocial theory of crime* asserts that the combination of neuroticism and extroversion is overrepresented in the offender population. Eysenck believed this combination resulted in a failure to learn from consequences of behaviour.

Modern-Day Debates: Psychological Experts in Court

- The expert witness has two potential functions: (1) to help the court understand a particular issue and/or (2) to provide an opinion (Ogloff & Cronshaw, 2001). The fact that experts are allowed to testify about their opinions in court is what separates them from regular witnesses.
- Difficulties in providing expert testimony often arise, due in part to the inherent differences between psychology and law. These differences include the manner in which knowledge is obtained, the methodology used to investigate the truth, and principles of the fields (Hess, 1987, 1999).
- For example, psychologists tend to use a *nomothetic approach* in an attempt to understand phenomena, whereby they attempt to uncover broad patterns and trends.

In contrast, the law adopts an *idiographic approach*, whereby an event is understood by examining specific details of individual cases.

- To be considered by a judge or jury, expert testimony must meet specific admissibility criteria.
 - One set of criteria in the United States is referred to as the “*general acceptance test*” (*Frye v. United States*, 1923). This test requires that testimony be based on scientific principles that are generally accepted within the scientific community.
 - More recently, the *Daubert* criteria have been proposed (*Daubert v. Merrill Dow Pharmaceuticals Inc.*, 1993). According to *Daubert*, expert testimony must: (1) be given by a qualified expert, (2) be relevant, and (3) be reliable.
 - In Canada, the admissibility of expert testimony is based on criteria outlined in *R. v. Mohan* (1994). According to these guidelines, testimony is admissible if it: (1) is relevant, (2) is necessary, (3) does not violate any exclusionary rules, and (4) comes from a qualified expert.
- Although such criteria may make it easier for judges to decide what testimony to allow in court, it is still problematic in that it is subjective and is highly dependent on the discretion of the judge.

SUGGESTED LECTURE ACTIVITIES

Definitions of Forensic Psychology

- Ask students whether they prefer a narrow or broad definition of forensic psychology and get them to explain why.

Relationship Between Psychology and the Law

- Provide students with examples of either: psychology and the law, psychology in the law, or psychology of the law. Have them discuss the category that they feel they can contribute most to and have them explain why.

History of Forensic Psychology

- Describe early research in forensic psychology (e.g., research conducted by Cattell [1895] or Stern [1901]). Ask students to discuss the strengths and weaknesses of the research design employed.
- Conduct a reality experiment in class and have the remaining students attempt to recall information about the event.

Psychological Theories of Crime

- Divide students into three groups and assign each group to one of the major categories of crime discussed in this chapter. Have each group discuss the strengths of their theory to the rest of the class and debate potential weaknesses.

Psychological Experts in Court

- Based on Hess' (1987, 1999) seven differences between psychology and law, ask students to discuss some obstacles that an expert may face in their role as an unbiased

witness. Have students discuss how an expert may overcome these obstacles and what systematic changes could be made by the legal system to prevent these problems.

- Provide an example of eyewitness expert testimony (use one of the early court cases, such as Schrenck-Notzing's testimony discussed in the textbook). Divide students into three groups (one group represents the prosecutor, another the defence, and the third will be judges). Ask the prosecution group to argue that the testimony would meet the *Mohan* criteria, ask the students representing the defence to argue against the testimony, and ask the judge group to make the final decision and discuss their reasoning).

SUGGESTED READINGS

Goldstein, A.M. (Ed.). (2007). *Forensic psychology: Emerging topics and expanding roles*. New York: John Wiley & Sons.

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Roesch, R., & Gagnon, N. (Eds.). (2007). *Psychology and law: Criminal and civil perspectives*. London: Ashgate Publishing Limited.

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SUMMARY OF COURT CASES

Jenkins v. United States (1962)

Facts:

- Jenkins was charged with breaking and entering, assault, and intent to rape, pleading not guilty by reason of insanity.
- Three clinical psychologists were presented by Jenkins as expert witnesses.
- The trial judge concluded that psychologists were not qualified to offer expert opinion on issues related to mental illness.
- On appeal, the court reversed the conviction and ordered a new trial, concluding that some psychologists are competent to provide expert testimony on such issues.

Summary:

During his trial, Jenkins presented three clinical psychologists to provide expert testimony supporting his defence of insanity at the time of the crimes. Based on interviews and reviews of his case history, all three psychologists determined that Jenkins had been suffering from schizophrenia at the time the offences took place. Two of the psychologists offered the opinion that they believed the crimes were related to his illness.

At the end of the trial, the judge ordered the jury to discount the testimony given by the psychologists, as they were not qualified to offer their opinion concerning the effect of mental illness in a court of law. On appeal, the American Psychological Association submitted a brief to the court indicating that psychologists are competent in this regard. The conviction of Jenkins was reversed, a new trial was ordered, and it was ruled that given appropriate experience and knowledge psychologists are qualified to provide expert opinion on matters related to mental illness.

R. v. Hubbert (1975)

Facts:

- Hubbert was charged and convicted of murder while under the supervision of a Lieutenant-Governor warrant.
- The fact that the defendant was under the care of the Penetanguishene Mental Health Centre at the time of the murder came out during the trial.
- The defendant pleaded not guilty and argued that he did not receive a fair trial because the jury was biased by his previous incarceration at the hospital for an unrelated incident.

Summary:

The defense lawyer believed that the jury would most likely be biased against Hubbert due to his status as a patient of Penetanguishene. Therefore, he requested that a psychiatrist give expert testimony regarding the likelihood that the jury would convict his client based upon his mental health status, and the nature of the murder, not upon evidence. The trial judge did not allow the psychiatrist's opinion. After Hubbert was convicted, the case was appealed to the Ontario Court of Appeal; the judge ruled that the psychiatrist would not have had the expertise to determine whether the knowledge of Hubbert's past incarceration at Penitaguishene would have biased the jury. He also ruled that whether the jury would be biased was irrelevant according to the instructions given to jurors by the judge, "to base their decision upon the evidence presented". The judge further iterated that the court could not concern themselves with individual personality characteristics of jurors, but rather the courts responsibility is to ensure that jurors are properly instructed how to fulfill their responsibilities. The defense appealed to the Supreme Court of Canada. The appeal was dismissed and Hubbert served a minimum sentence of 15 years.

R. v. Lavallee (1990)

Facts:

- Lavallee shot her abusive husband after being threatened by him "to kill him or he would kill her".
- There was considerable evidence that the accused was a victim of domestic violence.
- The defendant claimed self defence.
- A psychiatrist submitted testimony in support of the defendant based upon subjective interviews and police reports.

Summary:

After being found not guilty for killing her abusive husband the crown appealed to the Manitoba Court of Appeal arguing that Lavallee's psychiatrist gave testimony that

was based upon personal interviews with the accused, the police and her mother. At issue was the fact that the jury was not adequately warned that the doctor's testimony was based upon subjective evidence. Additionally, the jury was not instructed to give the same amount of credence to the medical testimony than to the other evidence presented in court. The crown was successful and a new trial was ordered. The defense appealed to the Supreme Court of Canada, which in 1990 set aside the order from the Manitoba Court of Appeal and restored the acquittal. The Supreme Court decision also included principles to guide decisions about expert testimony in cases of battered women.

Wenden v. Trikha (1991)

Facts:

- Trikha was involved in a motor vehicle accident in which Wenden was injured.
- The appellant was under the care of a psychiatrist at the time of the accident and was experiencing psychotic and depressive symptoms.
- Wenden attempted to hold the psychiatrist and the hospital responsible for the damages incurred.
- Damages were awarded to the plaintiff, however the doctor and hospital were not found liable.
- Trikha was found liable for negligence, but not criminally responsible due to his psychiatric condition.

Summary:

Wenden was struck by Trikha's vehicle and suffered substantial neurological and psychological injuries as a result. Trikha argued that he was driving his car radically and couldn't conceive the consequences of his behaviour due to his psychotic disorder. At issue in this case was the duty of care the psychiatrist and hospital have to reasonably perceive that Trikha would be a danger to others. The Alberta Court of Queen's Bench ruled that the doctor and hospital were not responsible because they had provided an appropriate level of care according to the behaviour Trikha was exhibiting at the time of being treated. The court also denied Wenden damages for her in-vitro child because the fetus had not suffered medically as a result of the accident, and the care Wenden was unable to provide to her baby after it was born, following the accident, was too remote to be connected to the accident. The plaintiff and the respondent (Trikha) appealed their decisions to the Alberta Court of Appeal. Both cases were dismissed. The plaintiff then appealed to the Supreme Court of Canada. The case was dismissed with costs awarded to Wenden.

R. v. Levogiannis (1993)

Facts:

- Levogiannis was charged with sexual interference after sexually assaulting a young boy.
- After a psychologist testified that the victim was experiencing substantial fear of the assailant and, in his opinion, the child would be unable to give a frank and honest account of the assault in court, the judge ordered a screen be used during the trial. The child gave his testimony while his view of the appellant was blocked.
- The appellant argued that the presence of the screen violated his charter rights.

Summary:

Levogiannis appealed his conviction for sexual interference to the Ontario Court of Appeal. The defendant argued that the presence of the screen violated his section 7 and 11 rights under the Canadian Charter of Rights and Responsibilities, which grants persons the right to be presumed innocent until proven guilty and the right to a fair trial. Levogiannis stated that the presence of the screen biased the judge by causing him to appear to be guilty. Furthermore, he believed that the screen interfered with the court's ability to fully cross examine the victim. However, the Appeal judge ruled that because the screen only blocked the child's view, and everyone else in the court including the defendant could face the complainant, the use of the screen did not violate the accused charter right to a fair trial. Concerning the right to be presumed innocent, the Ontario Court of Appeal judge ruled that the screen did not influence the judge's opinion. The case was appealed to the Supreme Court of Canada. Levogiannis' conviction was upheld and his appeal was dismissed.

R. v. Mohan (1994)**Facts:**

- Mohan, a paediatrician, was charged with sexual assault of four teenage patients.
- As part of Mohan's case, the defence wanted to provide expert testimony from a psychiatrist on how Mohan did not fit the 'type' of person who would commit such an offence.
- The judge ruled that the testimony was inadmissible.
- On appeal, the Supreme Court of Canada agreed, and established the admissibility standard for expert testimony.

Summary:

During trial, Mohan's defence attempted to provide expert testimony from a psychiatrist, Dr. Hill. Dr. Hill intended to testify that Mohan could not be the perpetrator of sexual assaults against several of his teenage patients, as the true perpetrator would belong to a group of unusual individuals, and Mohan did not fall within this group (i.e., he did not possess the characteristics that were indicative of this type of individual). At a voir dire, the trial judge ruled the evidence would not be admitted. On appeal, the Supreme Court of Canada upheld Mohan's conviction and established the Mohan criteria, outlining the admissibility standard for expert testimony within Canadian courts. The criteria include: the testimony must be necessary to provide additional relevant information to the judge and jury, the evidence presented must be relevant, the evidence must not violate any rules of exclusion, and the testimony must be provided by a qualified expert.

R. v. William (1998)**Facts:**

- Williams, an aboriginal male, was charged with robbery and pleaded not guilty. Subsequently, he chose to be tried before a jury.
- The trial judge did not allow the defense to question jurors in order to determine if they held prejudicial views against aboriginal peoples.
- The accused argued that someone else had committed the robbery and that the presence of discrimination against aboriginal people biased the jury.

Summary:

This case serves as an indication of whether jurors can be questioned as to any preexisting racial biases towards the defendant that may adversely influence their impartiality as jurors. At William's first trial, the judge allowed questioning of potential jurors; however, the Crown successfully claimed a mistrial in part due to the high publicity of the jury selection process. During William's second trial, the judge dismissed the accused's request to challenge the jurors in an attempt to determine whether or not they held any biases towards the defendant as an Aboriginal. In addition, the judge failed to inform the jury that they must disregard any bias or prejudice they possessed toward Aboriginal peoples. On appeal at the Supreme Court of Canada, it was held that the jury pool should consist of those who can serve impartially, and that in instances where the defence can show that a possibility of partiality exists, they should be permitted to question the jury. It was concluded that numerous types of juror prejudice could have influenced William's conviction, thus the appeal was allowed and a new trial was ordered.

Forensic psychology is a field that combines the practice of psychology and the law. Those who work in this field utilize psychological expertise as it applies to the justice system. The American Board of Forensic Psychology describes this field as the application of psychology to issues that involve the law and legal system. Interest in forensic psychology has grown significantly in recent years. Many people confuse forensic psychology with forensic science. While they are similar fields, there are a few very specific differences between the two. The key difference is the fact that forensic psychology is used to analyze all the psychological perspectives, rather than physical evidence. A forensic psychologist also deals with many legal issues, which are essential elements to the understanding of the criminal behavior. Forensic psychology often plays a role in punishing and preventing crimes. The word forensic is defined as "the scientific method for investigation of crime". Forensic psychology is often described as the merger of law and psychology. This field of psychology is often focused on the criminals themselves.