Introduction to the Assessment of Sex Offenders

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Presentation Goals

- Identify best approaches for conducting court-ordered sex offender evaluations
- Identify best approaches for conducting agency/institutionally focused evaluations
- Describe advantages and problems with DSM-5 diagnoses
- Discuss actuarial & dynamic (clinical) risk assessments
- Discuss report-writing and providing court testimony

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What I Won't Be Presenting

- How to score the Static-99R
- Comparing risk assessment instruments
- Comparing sexual inventories and other instruments
- Evaluating adolescents
- Evaluating female offenders

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First Step: Identify the Purpose of the Evaluation

- Provide a comprehensive history of the respondent.
- Assess recidivism risk (general criminal & sexual offending, substance abuse)
- Diagnose paraphilic disorders and other relevant conditions
- Make initial treatment recommendations and guide initial treatment (as needed)
- To assess supervisory needs (as needed)
- It may not be necessary to write a case study to explain the origin of the offender's behavior. You may have very limited information and your conclusions may be speculative.
- Write for your audience. Mental health professionals typically write reports for other MHPs' consumption. Reports should be pitched to the non-MHP unless it is for internal agency use. (Even then, use jargon sparingly.)

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Who is the Client?

- Answer: For a presentence evaluation, the Court is the client.
- Not:
  - the community
  - the victims
  - "the children"
  - the defendant
  - the defense
  - the prosecution
  - Whoever paid for it

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Agency Clients

If conducting the evaluation for an agency, the respondent is the client; the agency is a consumer.

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Retained Evaluations

- If retained by a defense attorney, he/she may be the consumer of the report and is paying you (unless a court has agreed to pay for the evaluation). Be sure you're clear before you begin. A signed agreement is recommended.
- Determine whether your report will be distributed to others
- It is important to be mindful of potential bias in such evaluations
- You may still have mandated reporting responsibilities and the respondent should be aware of that

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Reminder

- You are not an investigator.
- You are not an attorney.
- You are (probably) not qualified to question or challenge the results of a CPS or law enforcement investigation nor will you have access to every record they did.

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Preliminary Steps

For court-ordered cases:

- Don't begin without a signed order (or in retained cases, a fee agreement and retainer.) *An order provides <u>some</u> protection against malpractice and board complaints (qualified immunity.)*
- Don't begin without offense information from the prosecution. If you are unable to obtain it, contact the Court. Refuse to conduct the evaluation without it. Otherwise, your conclusions will be based on the least reliable information available: the defendant.
- Obtain informed consent from defendant. Remind him that prosecution, defense, and court will receive copies of your report (19.2-300). In other situations, make them aware of who will be receiving the report (e.g., attorney, treatment team)
- Obtain as much *independent* historical mental health, educational, employment and legal history information as possible.

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The Challenges of Evaluating Sex Offenders

- Sex offenders practice impression management more often than many criminal defendants. They may deal with shame and embarrassment by avoiding the unpleasant truth of their offenses. That does not mean they are "in denial." They are "in *avoidance*" or simply lying.
- Offenders use the same ego defense mechanisms as everyone else. There are not two types, one for sex offenders and another for the rest of us.
- The offender has had weeks or years to employ and reinforce ego defense mechanisms. You have just a few hours to challenge and understand his defense mechanisms, which may take years of treatment to unravel.

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The Alford Plea

North Carolina v. Alford (1970): In entering an Alford plea, the defendant admits that the evidence presented by the prosecution would likely be sufficient to persuade a judge or jury to find the defendant guilty beyond a reasonable doubt.

Treated the same as a guilty plea.

Can make an evaluation and treatment difficult:

"I only took an Alford plea as part of a plea bargain. I didn't commit the offense."

"I only pleaded guilty because my lawyer told me to, so I'd get a lower sentence."

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Dealing with the Alford Plea

- Don't relitigate the charge; treat it as a guilty plea and write your report accordingly.
- When writing your report, consider adding:

"Mr. Smith accepted an Alford plea for the Aggravated Sexual Battery charge and continues to maintain his innocence. He said he is not guilty and does not need treatment. For purposes of this report, Mr. Smith's plea is treated the same as a guilty plea or finding. If evidence emerges that supports his claim of innocence, the information below should be reconsidered."

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Should You Contact Collateral Sources?

Before interviewing any collateral contacts, ask yourself how their information may help form conclusions regarding risk and treatment. Would their information bias or inform you?

Remember: you're not conducting an investigation.

Should you contact victims? Very risky. Likely to be intrusive, unwelcome, and may aggravate any trauma. Can also bias the examiner. ***Not recommended.***

Should you contact witnesses? Risky. Should be done only with prosecutor's permission and defense attorney's awareness. Can bias the examiner.

Should you contact offender's partner/spouse/parent? May be very helpful; family/partner may have an agenda but could play a role in defendant's treatment & supervision. Would they report risky behavior and support his treatment?

Parents may be able to provide important developmental and behavioral information.

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Some Working Propositions

- A sexual offense, or deviant sexual behavior, is the visible manifestation of two less visible or invisible internal processes: affective and cognitive (fantasy). Biological or neurological processes may also be involved, but we may be unable to assess those in an evaluation.
- Deviant sexual behavior is not driven solely by seeking sexual gratification. Offenders may also be motivated by general excitement and arousal, "getting away with it", or may be satisfying other emotional needs, such as believing they are adored or loved by a child victim or wanting to humiliate the victim.

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More Working Propositions

- The most useful map of the offender's affective and cognitive processes and underlying fantasy may be embedded in the offense behavior. ***The victim is often the best, and frequently the only source of this information.***
- For offenders in treatment, we must keep in mind the limits of human memory.
- Repeat offenders' and most first-time offenders' fantasy lives likely preceded their actual offending, although they may deny this.
- An exception may be the highly antisocial offender, for whom the offense is impulsive and opportunistic and is just another example of taking what he wants without regard for others' welfare.

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The Role of Fantasy

- Involves withdrawal from the external world and a narrowed focus on the internal world.
- Always perfect. It always ends the way you want it to.
- Evolves over time because perfection is never realized
- Always available
- Hidden from others
- Self-reinforcing
- Covert rehearsal
- Is coupled with affective states (anger/hostility or pleasure/excitement)
- Sustains during periods of deprivation
- The least likely information an offender will disclose or even recognize

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More on Fantasy

- Evolution of fantasy can lead to changes in offense behavior, which can in turn influence future fantasies.
- Fantasy can be maintained indefinitely without overt offending. It may wax and wane over time.
- Fantasy consolidates ego defenses, self-soothing, and cognitive distortions.
- Many offenders may not understand the term, so asking about "day-dreaming" or simply "thinking about" offending behavior may be the best way to get to this.
- Offenders may insist that they had no fantasies prior to or between offenses. In some cases, that may be true, but there was some kind of cognitive activity going on and it is worth exploring.
- The repeat offender who insists he did not experience fantasies or offense-related thoughts before, after, or between offenses is essentially saying he impulsively offended every time he had the opportunity.

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Instrumentation (Test first; Interview last)

- Use instruments appropriate for forensic evaluations.
- Be familiar with the limits of each instrument. Non-MHPs (i.e., lawyers) are often enamored or skeptical of psychological inventories.
- Assess intellectual functioning as needed.
- Assess for malingering as needed (rare).
- Screen for neuropsych problems as needed.

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Before You Interview

- Be sure you have read all the available official information about the offense.
- Prepare a draft report you can reference in the interview. This will help you get organized and will highlight the areas you may need to focus on or question.
- Make a list of issues or questions you need to pursue in detail.

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Choosing Instruments

- Use only those instruments for which you have received training. (Keep your CV updated.)
- Do NOT leave psychological instruments with the offender to complete on his own.
- In an adversarial situation be prepared to explain the rationale for using, scoring and interpretation of all instruments used.
- Avoid "kitchen sinking."
- Use the best single instrument in a category after considering the offender's cognitive abilities.
  - Static-99R (offender not needed, but clarification may be helpful for some items)
  - PCL-R
  - MMPI-RF or MCMI
  - SRA-FV (rare)

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Static-99R Considerations

- The Static-99R is used to screen Virginia inmates for the SVP process, has the most research, and is the best choice for an actuarial instrument. It is the current standard in Virginia.
- The Static-99R predicts risk group membership, not individual risk.
- Be familiar with the literature.

Get training. The Static is much more complicated to score than it would first appear. The scoring rules are very detailed with many exceptions. Using it without training could lead to unfortunate consequences for the offender and you.

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Static-99R Training Opportunities

- Being mentored or supervised by a colleague, while valuable, should probably not be considered "training." Attending a training experience (virtual or in-person) is much better. You can get practice and can begin getting acquainted with the numerous Static minutiae.
- Check the following website for materials and documents:

  https://saarna.org/
- You can also get training on the Stable 2007 and Acute 2007 (primarily for community supervision.

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Recommended Videos

- Have a colleague double-check your scoring
- Document the reasons for each item on the scoring form and in the report if necessary

Andrew Brankley has created a set of videos that discuss actuarial risk assessment in some detail, and they are well worth watching. However, consider it supplemental information, not hands-on training.

https://www.youtube.com/c/AndrewBrankley

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Use of the Static-99R

There are situations where you cannot use the Static:

- Women.
- Adolescents under 18 at time of release or whose offenses all took place prior to age 17.

"The only circumstances where Static-99R could be used with adolescents who have sexually offended (and even then, we suggest using the scale with caution and including appropriate caveats in your report) is where the offender was released from the index sex offence at age 18 or older, was 17 years old when he committed the offence, AND the offence appears similar in nature to typical sex offences committed by adult offenders. If any of these conditions are not met, Static-99R should not be used."

- Those who have been released and in the community more than six months and more than ten years after offending. (There are exceptions.)
- The scoring manual provides sample language for reporting risk estimates in reports. Use it.

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Static-99R Scoring Considerations

The Scoring Manual and other official publications are sometimes vague or very complicated when making recommendations.

Adjusting Risk Based on Time Offence-Free and Post-Index Offending
A series of papers have helped understand and model how risk declines post-release from the index sex offence (Hanson et al., 2014, 2018; Thornton et al., 2021). The longer the person stays sex-offence free, the lower their risk. Additionally, a new conviction for post-index non-sexual offending increases risk. This effect is additive to and independent from the time free effect. That means that if someone has been sex offence-free for 10 years, for example, a new conviction for something like theft or even assault (non-sexual) does increase their risk but does not fully erase the reductions in risk from their time sex offence free. (p. 5) Additionally, having a new conviction for a non-sexual offence does not negate the time free adjustments. It has the effect of setting the person back 3.3 years. (p. 6).

Helmus, L. M., Lee, S. C., Phenix, A., Hanson, R. K., & Thornton, D. *Static-99R & Static-2002R Evaluators' Workbook*. September 28, 2021.

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Static-99R Risk Estimates

- Use the correct norms: Routine Norms or High Risk/High Need.
- Risk estimates gradually decrease after age 35; however, they are *estimates*.
- Be prepared to over-ride risk estimates if the clinical information supports it. For example, an older offender may have a very low Static score but be high risk because he has recently offended as well as few charges and numerous dynamic risk factors. One does not need robust health to molest a child.
- Age is not automatically protective; it is *potentially* protective.

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Sample Static-99R Language for High Risk/High Need Offenders

The scoring manual provides sample language for reports. Use it.

"The Static-99R accounts for the influence of age by recalculating risk estimates beginning at the age of 35. ***'s Static-99R score is **X**, placing him in the **[Very Low Risk Below Average Risk Average Risk Above Average Risk Well Above Average Risk]** category.

As needed: *** lost 1 point on the Static-99R when he turned 35 years old. He lost a point when he turned 40 years old. He lost 3 points on the Static-99R when he turned 60 years old.

In High Risk/High Need samples with the same score, the five-year sexual recidivism rate is **X%** and the ten-year sexual recidivism rate is **Y%**. This score places *** in a group that offends at a rate ___ times greater than the rate of offenders in the middle of the risk distribution (a Static-99R score of 2.)" Stated another way, he is at the ___ percentile of offender risk.

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PCL-R

- The PCL-R has high face validity, but complicated scoring rules.
- You **must** be trained to use the instrument.
- Many sex offenders, especially pedophiles, will score relatively low.
- Psychopathy, as measured by the PCL-R, is not the same as Antisociality (DSM), although they overlap. *Antisociality* comes from a social deviance model; *psychopathy* comes from a psychodynamic model.
- Don't use the terms interchangeably. (And don't even think of using the term "predator.")

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Sexual Interest Inventories

- Can be useful but can be misused as a shortcut to history-taking and interviewing. Require fairly good reading and vocabulary skills.
- Multiphasic Sex Inventory versions I & II are most useful when used as extensions of the interview process and not for their psychometric properties.
- Relying on MSI scores comes perilously close to "profile testimony."
- Go to the item level. If possible, discuss individual responses with defendant. Can often be very revealing.
- There are many inventories for sex offenders (e.g., Wilson Sexual Fantasy Scale, Bumby Child Molest Scale) that are potentially useful in a treatment setting, but there is a risk of misusing them in an assessment context.
- Of course, untreated offenders endorse distorted ideas! The important thing is to link them to risk and treatment needs.

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Self-Report Questionnaires

- Psychosexual Life History Questionnaire is very comprehensive, but lengthy.
- Can be useful, but only if the offender is honest and his reading comprehension is adequate.
- Look for internal inconsistency in any questionnaire.
- Look for external consistency: does his self-report match his history as described in other sources?
- If you use a questionnaire, indicate where the source of information in your report.

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Taking a Sexual History

- Can be the biggest challenge for both examiner and offender.
- Can be influenced by examiner's gender and approach.
- Offenders are often motivated to conceal even normal sexual behavior, concerned about the implications of admitting to it (e.g., masturbation) and perhaps being unsure what is "normal."
- Some offenders may use the discussion to highlight or exaggerate their sexual prowess.

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Conducting the Interview

By the time you meet with the offender, he has had weeks or years to rationalize his offenses to himself and rehearse explanations to others. He may have been interviewed multiple times or discussed his offenses in treatment. His denial and distortions may have already been reinforced or at least unchallenged by family, friends, or partner.

Alternatively, you may be the first person to ever interview him about his offenses in a mental health context.

It is important to have an official account of his offenses before the interview.

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Interview or Conversation?

- Don't mistake "rapport" for impression management.
- Interviews tend to be formal, structured, and potentially intimidating.
- Conversations are less formal, more free-flowing, and better for establishing some level of rapport. However, glib/facile offenders prefer conversations, hoping to manipulate the interviewer.
- Glib offenders can be very scripted and controlling. It can be useful to disrupt the script by interrupting, challenging, and redirecting, or by not responding to his cues. It may increase his anxiety and he is more likely to reveal information when you are skeptical or unmoved by his script.

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Interview Approaches

Sometimes I use the same rationalizing language the offender uses to help him discuss what happened.

- For example, the offender describes a child victim as dressing or acting provocatively. Rather than challenge this, accept it as the offender's rationalization and ask, "When the victim was acting like this, what did you think? Did you tell her parents about her inappropriate behavior?"
- Offenders often describe their offenses as brief, isolated experiences unconnected to their thoughts or emotions, and may present multiple offenses as impulsive acts with no connection to each other. Try to find links.

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Interviewing Strategies

- Offenders are infrequently reflective, self-aware or introspective, so you may get minimal information, but it's worth the effort.
- Offenders often claim they were misled by victims, especially minor teen victims.

"She told me she was 18."

How long did you know her? Six months? And in all that time you never asked her where she went to school? What did you talk about? Did you meet any of her friends? Did she drive? Work? Did you meet her family? Celebrate her birthday?

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Establish a Working Vocabulary

- Don't be put off by colloquialisms or vulgar terms. They may be the only words the defendant knows for certain acts or body parts. They may also reflect misogyny or hostility towards women.
- Don't assume the defendant is using sexual terms correctly. His knowledge of anatomy may be limited or faulty.
- Correcting the defendant may be off-putting, but if you use appropriate terms, he may emulate you.
- He may use some terms very literally. For example, he may believe if he did not have an erection, he was not sexually aroused.

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Listen *between* the Lines

How a respondent answers questions may be more informative than the actual answers.

- Changing the subject and answering the question he wants to answer, not the one asked
- Non-responsiveness & misdirection
- Defensiveness or DOC thinking (e.g., "I caught a charge")
- Scripted or superficial answers ("one thing led to another and the next thing you know, we were having sex.")
- Detachment and distancing ("the committed offense") or "They say I raped her."
- Minimization ("I touched her" instead of raped her) or "My penis barely entered him."

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The Jailhouse Lawyer

- Incarcerated offenders may take a legalistic approach to their offenses and the evaluation, especially if they are facing civil commitment.
- "I was charged with sexual battery, but it was reduced to simple assault. So, not a sexual offense."
- "I should not receive a point on the Static-99R because I was in a relationship for 2+ years."
- "According to Doe vs. Settle, I should not be considered a violent offender because…"
- Refer the respondent to his attorney when confronted with legalistic challenges.

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Superficiality & Victim Empathy

For a variety of reasons (**callousness** or **cluelessness**) defendants may be very superficial in their discussions of the offense.

How do you imagine this situation affected [the victim]?

My life is ruined!
I saw her in court and she looked OK.
The offense probably affected him.
I don't think it hurt her. She was a crack whore. It was a drug deal gone bad.
I wish I could take it all back, but I can't so…
I was in the wrong place at the wrong time.
"It probably ruined her life; she can't trust men…"

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Victim-of-the-System

When you step back and consider what happened, what is the worst part?

- Little or no mention of the victim.
- It ruined my life and I spent years in prison.
- My family suffered. My mom is 80 years old. I need to be home with her.
- I think the [victim, victim's family] are behind this.
- We were friends and my actions were misinterpreted.
- Anybody who knows me knows I would never do such a thing.

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Cognitive Distortions

Offenders often voice cognitive distortions they will be addressing in treatment. It may not be helpful to challenge the errors, but sometimes probing will elicit more distorted thinking.

- **Minimization:** Offenders often minimize what they did, for example, "I only put it in a little ways" or "I could have penetrated her, but I didn't."
- **Hairsplitting:** The offender may be focused on the *charge*, and not the behavior. This is DOC-thinking: "I caught a charge." Or "the sex charge was reduced to battery so wasn't a sex offense."
- **Projection of Blame:** "She was walking around in her underwear." "She was a crack whore." "I knew she was having sex with boys her age."
- **Victim-stancing:** "She took advantage of me" or "She was lying about me."
- **Emphasizing his personal virtue:** "I was supporting her and her daughter."
- **Grievance-thinking:** "I 'm going to fire my lawyer because she's not helping me." "My ex put the victim up to telling these lies."

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Let's Talk About Human Memory

A flashbulb memory is a ***supposedly*** **accurate and exceptionally vivid long-lasting memory for the circumstances surrounding learning about a dramatic event**. They are memories that are affected by our emotional state. However, they are can be influenced by time, retelling, and psychological factors.

Sometimes interviewers and therapists place too much emphasis on an offender's poor recall of a complex set of behaviors that occurred many months or years earlier. In treatment we sometimes expect flashbulb memories which are subject to distortions like any other memory.

Inability to recall details about an offense that may have occurred during a state of intense physiological arousal and/or chemical intoxication should be expected and are not necessarily evidence of denial or lying. *How they describe what happened is as important as what they described.*

What the offender says may be an attempt, distorted or not, to explain what happened.

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Discussing the Circumstances of the Offense

- Due to shame and embarrassment, this may be difficult for the offender, so be diplomatic. It's not the time to be therapeutically confrontational but you can challenge.
- When asking the questions don't interrogate the defendant, seek clarity. (Lt. Columbo)
- Be specific. Don't accept vague statements such as, "I put my thing in her bottom." Be explicit about "thing" and "bottom." Does he mean vagina, anus, or both?

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Grooming

- "Grooming" has entered the popular lexicon, so while it may not be a term the offender is familiar with, it is a concept others understand. (I don't use it with untreated offenders unless they use it first.)
- Grooming can involve a growing infatuation or sexual interest.
- Grooming can involve progressively testing a potential victim's boundaries or assertiveness.
- Grooming can include parents or family.
- Grooming can involve gifts, privileges, or concealing rule-breaking behavior.
- Grooming can continue well beyond the offense or first offense.

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Pre-Offense

- Why do you think this happened?
- What was going on in your life?
- Had you ever contemplated doing something like this before?
- What were you thinking/experiencing just before you offended?
- What did you think the [victim's] reaction might be when you thought about [offending]?
- Did you think [victim] wanted this to happen? Did he/she do anything to encourage it?
- Did you worry [victim] might tell? What did you do to discourage this?
- Did you tell yourself anything that helped you offend, e.g., she wants to have sex with me?

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During the Offense

- What were you thinking/experiencing during the sexual offense? (This may be vague or limited.)
- How was the victim acting? Did he/she protest or resist? (Offenders often interpret compliance as consent.)
- How did he/she act immediately after the offense?
- Did you say anything to the victim to discourage them from reporting (threat or bribe)?
- Intoxication may interfere with recall or be defendant's fallback position. Be skeptical if they claim perfect recall while under the influence.
- Sometimes they may say, "I was drunk and can't remember everything that happened, but I'm sure I didn't _____"

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Post-Offense

- What did you think/feel immediately after the offense: Fear? Anxiety? Relief? Shame? Triumph?
- Did you worry about getting caught?
- How did you manage any anxiety?
- Did you do anything to minimize it being reported?

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For Serial Offenders

- Did you think about what happened between offenses? (fantasy)
- Did you think about doing it again?
- Did you promise yourself it would never happen again? Why do you think it happened again?
- What did you feel between offenses?
- What transpired between you and the victim between offenses?

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The Challenge of Diagnosis: DSM-I & DSM-II

- **American Psychiatric Association Manual (1917).** In 1917 the APA developed a new guide for mental hospitals called the *Statistical Manual for the Use of Institutions for the Insane.* It included twenty-two diagnoses and was revised several times by the APA over the years.
- **DSM-I (1952).** An APA Committee on Nomenclature and Statistics was created to standardize the usage of different diagnoses. The Diagnostic and Statistical Manual of Mental Disorders (DSM-I) was approved in 1951 and published in 1952. It was 130 pages and listed 106 mental disorders, including several categories of "personality disturbance," generally distinguished from "neurosis."
- **DSM-II (1968).** In the 1960s, there were many challenges to the concept of mental illness itself. These challenges came from psychiatrists (Szasz), who argued mental illness was a myth used to disguise moral conflicts or to stigmatize people.

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DSM-III & III-R

- **DSM-III (1980).** In 1974 it was decided to revise DSM to make its nomenclature consistent with the International Statistical Classification of Diseases and Related Health Problems (ICD), published by the WHO.
- **DSM-III-R (1987).** DSM-III-R was published as a revision of DSM-III. Categories were renamed and reorganized, and significant changes in criteria were made. Six categories were deleted while others were added. Controversial diagnoses, such as pre-menstrual dysphoric disorder and masochistic personality disorder were discarded. "Ego-dystonic homosexuality" was removed and was largely subsumed under "sexual disorder not otherwise specified", which can include "persistent and marked distress about one's sexual orientation."

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DSM-IV & DSM-IV-TR

- **DSM-IV (1994).** Listed 410 disorders in 886 pages on five axes.
- **DSM-IV-TR (2000).** A "text revision" of the DSM-IV was published in 2000. The diagnostic categories and the vast majority of the specific criteria for diagnosis were unchanged. The text sections giving extra information on each diagnosis were updated, as were some of the diagnostic codes to maintain consistency with the ICD.

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DSM-5

- **DSM-5.** The DSM-5 was published in May 2013. DSM-5 contains extensively revised diagnoses and, in some cases, broadens diagnostic definitions while narrowing definitions in other cases.
- Wollert (2007) claimed the inter-rater reliability of the diagnostic opinions in civil commitment was poor. However, he was mixing "diagnosis" with "civil commitment criteria" and while they overlap, they are not identical.

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Paraphilic Diagnosis

Depending on the setting and context, the diagnostic process can have greater or lesser influence on outcomes.

- Attorneys can be quick to highlight the inexact nature of diagnosis when it suits; they can also focus too much on diagnosis as an explanation for behavior.
- DSM can be deceptive: it looks like a simple, 947-page cookbook, but it requires training and sophisticated experience with and understanding of psychopathology and symptomatology.

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Non-Paraphilic Explanations for Sex Offending

It can be helpful to remind readers, when appropriate, that some sexual offending can be traced to or influenced by non-paraphilic conditions. At the same time, care must be taken to determine whether the offense was *caused* by the condition. For example, very few individuals with psychotic disorders commit sexual offenses.

- Intellectual Disability
- Mania
- Schizophrenia
- Antisocial Personality Disorder
- Substance Abuse Disorders

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Using DSM-5

- DSM is a **standardized nomenclature**, not a reference work on mental health treatment.
- DSM is not the only book ever written on paraphilias, but it is usually the only one with which attorneys and judges are familiar. Therefore, you should take steps to educate readers, but don't overdo it.
- ***Seek diagnostic parsimony.*** Don't use a vague "Unspecified" diagnosis unless you have exhausted the most likely possibilities. If you do, outline the reasons for the lack of precision in your report.
- Diagnosis ≠ causation. Where possible, connect diagnosis to risk and treatment needs, usually in the Discussion section. If the respondent stops his medication, is he more likely to reoffend?
- Months may elapse between the time you write a report and it is presented in court or elsewhere. It is essential to provide the rationale for your diagnostic conclusions in the report so you can discuss them later. It will also help future clinicians.
- Thorough documentation can also help you if you receive a complaint about the report.

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"Other Specified" & "Unspecified" Diagnoses

When necessary, add language clarifying "Other Specified" and "Unspecified" disorders:

"The diversity of clinical presentations makes it impossible for the diagnostic nomenclature to cover every possible situation. To enhance diagnostic specificity, DSM-5 offers two options for clinical use: *other specified disorder* and *unspecified disorder*. The *other specified disorder* category is provided to allow the clinician to communicate the specific reason that the presentation does not meet the criteria for any specific category within a diagnostic class. When the clinician is not able to further specify and describe the clinical presentation, the *unspecified disorder* diagnosis can be given. *** has been given such a diagnosis, specifically, _____."

(See DSM-5 p. 15-60)

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Defending "Other Specified" & "Unspecified" Diagnoses

- When it suits their case, attorneys may challenge using "Other Specified" and "Unspecified" diagnoses as evidence of the inexactness of psychiatric diagnosis.
- Such diagnoses actually reflect *flexibility* and the reality of the diagnostic process, especially with a defendant new to the mental health system. You simply may not have enough information for a dispositive diagnosis.
- DSM is updated every 10-15 years. Science marches on between editions.
- DSM is a product of panels and politics, especially with respect to sexual offending.

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General Paraphilic Diagnosis Language Adapted from DSM-5

"The term *paraphilia* denotes an intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. In circumstances where it is difficult to determine whether the individual's interest is "intense," the term *paraphilia* may be defined as any sexual interest greater than or equal to normophilic sexual interests.

A *paraphilic disorder* is a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others.

The specifier *In a controlled environment* is primarily applicable to individuals living in institutional or other settings where opportunities to engage in the paraphilic behavior are restricted. However, being in such an environment does not necessarily stop people from offending; therefore, it is possible it should not be used. (It is not used with Pedophilic Disorder.)"

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General Paraphilic Diagnosis Language (2)

Sometimes, DSM's language doesn't fit local realities.

- For example, a patient/inmate/resident with a diagnosis of Exhibitionistic Disorder continues to expose to staff and/or other patients. It is relatively meaningless to use the specifier "In a controlled environment" as it is clear the environment is not deterring the person's behavior and may even make reoffending more likely. At the same time, that should be discussed in the report.
- *In full remission* indicates that the individual has not acted on the urges with a non-consenting person, and there has been no distress or impairment in social, occupation, or other areas of functioning, for at least 5 years while in an *uncontrolled environment.*

59

Pedophilic Disorder Diagnosis

"Pedophilic Disorder is a mental disorder characterized by a person's feelings of recurrent, intense sexually arousing fantasies, urges, or behaviors involving sexual activity with prepubescent child or children, generally age 13 or younger, that span at least 6 months. The criteria for Pedophilic Disorder include that the person has acted on these urges, or feels significant distress or experienced interpersonal difficulty because of them. The individual must be at least 16 years old and at least 5 years older than the child or children to whom he is attracted. Pedophilic Disorder is a mental disorder that is acquired or congenital, affects a person's emotional and/or volitional capacity, and predisposes him to commit sexually violent acts against minors.

The "non-exclusive type" specifier means that the individual is also sexually aroused to adults. The sexual desire may be for children of a certain gender and age-range, but sometimes includes children of both genders spanning different ages; hence the specifier, "Sexually attracted to males" **OR** "Sexually attracted to females" **OR** "Sexually attracted to both." The specifier "limited to incest" indicates that the individual's known victims were close family members."

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The Pedophilic Diagnosis Six-Month Exception

Sometimes the offender's ***known*** offense pattern does not meet the six-month requirement, but there is evidence suggestive of pedophilic interests. In those cases, consider using the following language:

"The Criterion A clause, indicating that the signs or symptoms of pedophilia have persisted for 6 months or longer, is intended to ensure that the sexual attraction to children is not merely transient. However, the diagnosis may be made if there is clinical evidence of sustained persistence of the sexual attraction to children even if the 6-month duration cannot be precisely determined (DSM-5 p. 698)." *[Add explanatory language]*

61

Antisocial Personality Disorder Diagnosis

"The essential feature of *Antisocial Personality Disorder* is a pervasive pattern of disregard for, and violation of, the rights others that begins in childhood or early adolescence and continues into adulthood. Deceit and manipulation are central features of Antisocial Personality Disorder.

Individuals with Antisocial Personality Disorder frequently lack empathy and tend to be callous, cynical, and contemptuous of the feelings, rights, and sufferings of others. They may have an inflated and arrogant self-appraisal (e.g., feel that ordinary work is beneath them or lack a realistic concern about their current problems or their future) and may be excessively opinionated, self-assured, or cocky. They may display a glib, superficial charm and be quite voluble and verbally facile (e.g., using technical terms or jargon that might impress someone who is unfamiliar with the topic.) These individuals may also be irresponsible and exploitative in their sexual relationships and may never have sustained a monogamous relationship.

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APD Diagnosis Criteria 1/2

*** meets at least __ of the 7 specific criteria, only 3 of which are necessary to establish the diagnosis:
[Delete those that do not apply]

- Failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest (as evidenced by long and serious criminal history);
- Deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure (as evidenced by his use of aliases and lying about the crimes he has committed, lying in prison or VCBR regarding rule violations);
- Impulsivity or failure to plan ahead (as evidenced by the nature of his crimes and his own descriptions of his behavior);
- Irritability and aggressiveness, as indicated by repeated physical fights or assaults (as evidenced by multiple charges and convictions for assaultive behavior);

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APD Diagnosis 2/2

- Reckless disregard for safety of self or others (as evidenced by multiple charges for assault, domestic violence, sexual assault);
- Consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations (as evidenced by unstable employment history, not paying court-ordered restitution, failure to pay child support);
- Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another (as evidenced by the lack of remorse shown for the victims of his crimes, his blaming others or the victim for his crimes).

There is evidence of Conduct Disorder prior to age 15.

[For SVP] Antisocial Personality Disorder is a personality disorder that is acquired or congenital, affects ***'s emotional and/or volitional capacity, and by causing him difficulty controlling his predatory behavior, predisposes him to engage in sexually violent acts.

64

Other Specified Personality Disorder (Antisocial)

I recommend against diagnosing "Antisocial Traits." Use the full diagnostic criteria.

Frequently, it is difficult to establish whether there was evidence of a conduct disorder prior to age 15:

- Records get expunged or go missing.
- Offenders are unreliable historians.
- Years may have passed since the offender's adolescence.

When this is the case, you may still be able to diagnose "Other Specified Personality Disorder (Antisocial).

65

Criteria for Other Specified Personality Disorder (Antisocial)

Use the same language as "Antisocial Personality Disorder" then add:

"In order to be diagnosed with Antisocial Personality Disorder the individual must also show evidence of a conduct disorder prior to age 15. In ***'s case, there is limited or no such evidence.

In this examiner's opinion, *** has consistently shown difficulties in the areas described above and he therefore meets the criteria for the diagnosis of *Other Specified Personality Disorder (Antisocial)."*

66

Diagnosing Other Specified Paraphilic Disorder (Hebephilia)

This can be an especially challenging diagnosis, especially when the offender's and victim's (or victims') ages are close. Alternatively, their *developmental* ages may be closer than their chronological ages suggest. The issue of *consent* will also have to be explored but stay away from legal arguments.

- A 13-year-old girl is in an ongoing sexual relationship with an 18-year-old male.
- A 13-year-old girl is in an ongoing sexual relationship with a 23-year-old male who is mildly intellectually disabled.
- A 13-year-old boy is in an ongoing sexual relationship with an 18-year-old male.
- A 30-year-old man has serial sexual relationships with several 12–13-year-old boys.
- A 25-year-old male with a history of multiple sexual relationships with underage teens as well as age peers, despite opportunities to have relationships with peers.

67

Diagnostic Considerations for Hebephilia

- Social context. Is the offender an opportunist who also indiscriminately has sex with pubescent minors?
- Offender's psychosexual development. Is the offender attracted to the psychological and physical characteristics of pubescent minors?
- Does the offender appear to gravitate to pubescent minors rather than peer relationships due to poor social skills?
- Did the offender start abusing a prepubescent victim and continued as the victim aged?

68

Ephebophilia

- **Ephebophilia** is a primary sexual interest in mid-to-late adolescents, generally ages 15 to 19. It is one of a number of sexual preferences across age groups subsumed under the technical term *chronophilia*.
- When necessary, make a distinction between pedophilia, hebephilia, and ephebophilia in the report. In some cases, an offender may meet criteria for more than one.

69

Suggested Language for Hebephilia

*** has been diagnosed with *Other Specified Paraphilic Disorder (Hebephilia).* The impairment for a hebephilic individual is that he seeks post-pubescent adolescents for sexual arousal purposes. While attraction to sexually developed adolescents may be at least partially influenced by biology, the hebephilic individual is not merely attracted to adolescents, but seeks or fantasizes about sexual interaction with them at the expense of appropriate intimate relationships. The paraphilia is not determined by the object that a person finds attractive but by the degree to which the attraction leads to impairment in the person's interpersonal, social and sexual functioning. Repeatedly seeking sexual partners in this age group despite legal or social consequences is another example of the behavior that supports this diagnosis.

70

Diagnosing Adolescents

- Diagnosing adolescents with Pedophilic Disorder can be difficult. Beyond the age requirements, adolescent male offenders generally have low rates of recidivism as adults, although they may have other behavioral or sexual issues as adults.
- Diagnosing adolescents with other paraphilias can also be complicated by their age and context of the sexual behavior.
- Be careful: a diagnosis may follow the adolescent for the rest of his life. However, if after age 18 there is additional evidence of sexual interest in children, you should consider using the diagnosis.

71

Unspecified Paraphilic Disorder

DSM-5 provides useful language for those conditions that do not neatly fit its paraphilic diagnoses.

"DSM-5 makes it clear that there are paraphilic disorders other than the eight such disorders that are listed in the manual: "Many dozens of distinct paraphilias have been identified and named, and almost any of them could, by virtue of its negative consequences for the individual or for others, rise to the level of a paraphilic disorder. The diagnoses of the other specified and unspecified paraphilic disorders are therefore indispensable and will be required in many cases." (DSM-5, p. 685.)

*** has been diagnosed with _____."

72

Example of an Other Specified Paraphilic Disorder: *Public Masturbation*

"Other Specified Paraphilic Disorder, Public Masturbation, refers to the practice of surreptitiously watching unsuspecting persons, usually females, while masturbating in a public location. The targets of this behavior are not involved in sexual activity, but are engaging in a variety of normal activities, such as work, shopping or recreation. They are usually unaware they are being watched or are the objects of sexual attention, although some offenders deliberately or inadvertently allow themselves to be seen while masturbating. Thus, public masturbation may contain elements of both voyeurism and exhibitionism. While Public Masturbation is not considered a predicate offense [SVP statute], it reflects the presence of deviant sexual interests and negative attitudes towards females, both of which are associated with sexual recidivism risk. Also, the Static-99R scores up to three items ("Prior Sex Offenses," "Prior Sentencing Dates" and "Non-Contact Sex Offenses") for convictions for this and other non-contact offenses, reflecting its relevance to future sexual recidivism risk."

73

Don't Be This Guy (1/3)

The respondent's expert questioned the validity of the investigation of child sexual abuse charges. This included challenging the police investigation and a CPS interview of the victim.

"Individuals who suffer from pedophilia [sic] disorder are frequently discernible by their own childlike nature, their intensity of interest and/or attraction to child related themes and movies (e.g., Disney), by self-report, or by keeping a massive collection of pictures of disparate children. They **almost invariably** have a strong history of gravitating towards child-oriented professions and/or activities. Essentially, **those suffering from pedophilia have numerous other signs that are clearly observable**, especially when looked for, that point to their Paraphilic interests.

Most of the signs that indicate the presence of pedophilia do not involve the actual victimization of children. Of course, evidence of seeking out and consistently engaging in sexual activity with children over a period of more than six months is a very important diagnostic indicator of the presence of the disorder. " [That's what defines a diagnosis of Pedophilia.]

74

Don't Be This Guy (2/3)

In Mr. X's case we have the reported history of numerous events of molestation occurring over a period of greater than six months. It is common for victims of sexual abuse to remember most aspects associated with said sexual abuse. It is more common for there to be a significant amount of consistency between their descriptions of the events of abuse throughout legal proceedings associated with that abuse. This consistency in reporting the actions of abuse in these sorts of cases is due in part because most of the events produce significant emotional responses. Emotional based memories, especially negative emotionally based ones, are the strongest memories that we typically develop and this is an evolutionary advantage [???]. Additionally, during the course of legal proceedings associated with the prosecution of child molestation, the victim has to repeat the sequence of events numerous times. This repetition adds further to the consistency in the report of the sexual abuse. It is very apparent that Mr. X committed aggravated sexual battery, as evidenced by statements made by the Finder of Fact within his trial, but also by his own admission. However, the pertinent question associated with this civil commitment process is the consistency, intensity, and duration of his inappropriate sexual behaviors and the nature of his sexual attraction. In order to determine to a reasonable degree of psychological certainty, it seems necessary to the undersigned to have something of a consistent accounting of Paraphilic related behaviors.

75

Don't Be This Guy (3/3)

"Of note, Pedophiles generally do not limit themselves to one victim and most frequently if not always demonstrate signs of general attraction to children of their particular target group. Pedophiles who find it difficult to control their pedophilic condition that makes them likely to commit sexually violent acts, most frequently if not always, seek out additional and numerous child victims. In treatment notes, Mr. X admitted some form of attraction to his stepdaughter but there is no indication within the available records nor his statements, to indicate a general attraction to children. Even if one were to consider that Mr. X is lying (despite polygraph results) regarding his report of rubbing his stepdaughter's breasts on one occasion, and one were to believe, despite the inconsistencies [?] in reporting and other contextual factors associated with the nature of events surrounding accusations against him [?] that he did numerous sexual related behaviors directed towards his stepdaughter over a period greater than six months, [?] **the data does not indicate in the slightest an intense and persistent sexual attraction to children**. Rather the data clearly indicates that if all of those factors were completely true as described in this paragraph *Mr. X then has an inappropriate sexual attraction to his stepdaughter- one child- and not towards children in general.* This state of affairs does not support the diagnosis of pedophilia."

76

Problems…

- Misuse or misrepresentation of DSM-5:
  - Stating that one should have more than one victim to be diagnosed with Pedophilic Disorder.
  - Stating that one must show general attraction to children to be diagnosed with Pedophilic Disorder.
- The psychologist criticized and questioned the investigation techniques used by Social Services and the police.
- The psychologist practiced outside his area of training and expertise (not an expert on child abuse investigative practices.)
- Describes established facts then dismisses their relevance and even how they were obtained.
- The psychologist was an advocate for the defendant rather than an objective examiner.
- The psychologist made an unsupported assertion that true pedophiles are detectible by their public non-sexual behavior.

77

Other Specified Paraphilic Disorder (Non-Consent)

DSM has never offered a diagnosis for non-consent, that is, rape. However, it is clear some individuals who commit multiple instances of rape or coercive sexual assault are sexually aroused by the non-consenting aspect of their assaults.

"DSM-5 makes it clear that there are other paraphilic disorders other than the eight such disorders that are listed in the manual: "Many dozens of distinct paraphilias have been identified and named, and almost any of them could, by virtue of its negative consequences for the individual or for others, rise to the level of a paraphilic disorder. The diagnoses of the other specified and unspecified paraphilic disorders are therefore indispensable and will be required in many cases. (DSM-5, p. 685.)"

78

Considerations for Other Specified Paraphilic Disorder (Non-Consent)

"Other Specified Paraphilic Disorder (Non-Consent) does not appear in DSM-5 as a specific diagnosis, however there is a consensus among some forensic mental health professionals (see Doren, 2002, p. 63), that some individuals do in fact exhibit behaviors that meet diagnostic criteria for a paraphilia centered on sexual contact with a non-consenting partner."

Dennis Doren (2002) has offered the following for consideration of an individual meeting criteria for Other Specified Paraphilic Disorder (Non-Consent).

79

Working Criteria for Non-Consent Diagnosis

- Ejaculation or other clear signs of sexual arousal during events that are clearly non-consensual.
  - Reason to believe the offender's arousal was at least partially due to the non-consensual nature of the interaction.
  - (MD: escalation of aggression during the assault)
- Repetitive patterns of actions, as if scripts.
  - Set the victim up/groomed
  - Initiated the attack
  - Made certain comments during the assault
  - Had the victim do or say certain things
  - Did certain acts, even in a certain order
  - Treated the victim a certain way after the assault
- Virtually all of the person's criminal behavior is sexual
- Raped even when victim was willing to have consensual sex

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Working Criteria for Non-Consent Diagnosis (cont.)

- Short time period after consequence (arrest, conviction, release from incarceration) before raping again.
- Raping under circumstances with high likelihood of being caught.
- Having concomitant consenting sexual partners.
- Various types of victims in "purely" sex offenders.
  - Broad range of victims (male, female, children, adults); large victim pool
  - Limited non-sexual offense history.
- Maintenance of a rape kit.

In addition, consider the absence of contrary signs:

- Interrupting sexual assault when he realizes victim is emotionally upset.
- A pattern of grooming victims that involves more of an emotional/sexual seduction
- Comments by offender during assault that he views sex as consenting and enjoyed by victim
- Signs of not paying attention to victim; "masturbatory receptacle"

81

PTSD

- Some offenders claim "PTSD" contributed to or caused their offending.
- Popular culture may support this belief.
- PTSD has very specific and rigorous diagnostic criteria; be sure to adhere to them when making or ruling out the diagnosis.
- Distinguish between more common anxiety and true PTSD.
- Some respondents may indeed suffer from PTSD, but be careful linking the diagnosis to later, antisocial or paraphilic behavior.

82

A Diagnostic Exercise

- 69 YO MWM; no history of substance abuse, mood disorder or mental health issues
- FSIQ 89
- Medical issues: COPD, Type 2 diabetes, hypertension, bilateral hearing loss
- 1996 (age 48): convicted of exposing himself to neighbors. He denies this.
- 2001 (age 53): arrested for soliciting a prostitute, who was an undercover police officer.
- 2008 (age 60): A woman filed a report with police saying Mr. X had invited her to his house to complete a job application. Once there, he asked her how big her nipples were and if she shaved her genital area and offered her money to have sex. She refused and later declined to prosecute. Mr. X claimed the woman was a prostitute who was in the neighborhood looking for a customer. Unable to find him, she tried to solicit him. (No evidence to support this.)

83

A Diagnostic Exercise (1/3)

- 2008 (age 60): Mr. X called a woman who had distributed flyers, looking for work. Mr. X called her and asked whether she shaved her genital area and if she liked cunnilingus. She rebuffed him; he called her back twice and she did not answer. According to an evaluation done at the time, Mr. X denied that version of events but said he was trying to barter with her for sex. He was convicted of making annoying phone calls.
- 2009 (age 61): An adult female responded to an advertisement for a job with Mr. X and met with him in his car. He locked the car doors, pulled her top down, and fondled her breasts. He was convicted of abduction with intent to defile. He has consistently denied committing the offense.

84

A Diagnostic Exercise (2/3)

- In a 2011 report there was mention of Mr. X posting advertisements "in places where he thought he could attract financially desperate women, such as a shelter, and when they applied for a job he would try to solicit them for a sex act instead."
- In the 2011 report that examiner described an incident that did not result in a criminal charge. The complainant said she was at a flea market and spoke with Mr. X, who discussed hiring her for a secretarial job. She agreed to meet with him later. He asked her if she shaved her genital area and if she had big nipples. Later, he asked her if she would massage him naked for $100. (It was not clear if one or both were to be unclothed.) She reported the incident to police but did not pursue prosecution.

85

A Diagnostic Exercise (3/3)

- Mr. X's probation violation report that stated there had been complaints about him advertising for bookkeeping help for his trucking business. When applicants would meet with him "he would sexually assault them." No details of the assaults, other than a dismissed 2007 charge were provided.
- Previous examiners offered *"Paraphilia Not Otherwise Specified, Deviant Level of Attraction to Prostitution."*
- *What is the paraphilic behavior pattern in these known incidents?*

86

My Analysis (1/2)

- Mr. X engaged in goal-oriented, focused, calculated attempts to identify vulnerable women who would be more likely to comply with his sexual advances. *This is the epitome of predatory behavior.*
- Mr. X tested his prospective victims' compliance by asking crude, intrusive questions about their bodies.
- Mr. X denigrated his victims after they complained, claiming they were prostitutes and/or were lying. It is not evident what they had to gain by making false accusations.

87

My Analysis (2/2)

- Sexual arousal is but one aspect of the gratification involved in coercive sexual behavior. Mr. X may have been sexually and psychologically aroused by the sense of control he had over his victims and the hope he would be sexually gratified by them.
- There is no evidence Mr. X's victims consented to the interactions in which they engaged. They did not answer advertisements knowing they would be subjected to sexual advances. At the very least, there was coercion. *Non-consent is an element of a paraphilic disorder.*
- There is evidence Mr. X's behavior was escalating to outright sexual assault. His 2009 offense involved physical sexual assault of his victim after a series of non-contact offenses.

88

Report Language
(Note the absence of a "predatory" label)

"Thus, this writer does not see Mr. X's offense behaviors as focused on prostitution, which is a commercial exchange between consenting adults. Rather, he was partially gratified by the control he exerted from using a ruse and the promise of money with women who did not give consent. [Previous examiner] discussed at length Mr. X's long history of scamming others and the pride he took in it. His sexual offenses appear to be additional examples of that attitude.

It is difficult, especially considering Mr. X's emphatic denials, to provide a paraphilic diagnosis with the usual confidence. However, it is this writer's opinion Mr. X was aroused by the sense of sexual control he felt with his victims, coupled with his antisocial need to take something from someone without their consent. That forms the basis of a diagnosis of *Unspecified Paraphilic Disorder*. *In a controlled environment* is primarily applicable to individuals living in institutional or other settings where opportunities to engage in the paraphilic behavior are restricted."

89

Risk Assessment: What is Risk?

For our purposes, *risk is the probability of certain negative behaviors emerging or reemerging and causing harm to others.*

- Risk must also be considered in the context of a time frame: risk over what time period?
- Risk must be considered in the context of base rates: risk compared to what or who?

90

Dynamic Risk Assessment

"Risk assessment can consist of two parts: the actuarial assessment of risk (e.g., Static-99R), and dynamic risk assessment, which focuses on psychological and behavioral risk factors. These risk factors and the supporting research are abstracted from Mann, Hanson and Thornton (2010). They can also be considered *long-term vulnerabilities*, that is, issues with which an offender will have to contend indefinitely to manage his risk in the community. Failures within these areas can *destabilize* him potentially leading to failure on conditional release and possibly a sexual or criminal reoffense."

91

Dynamic Risk Factors

Dynamic risk factors form the foundation for treatment and community management.

They are not equally relevant for all individuals. For example, for an older or disabled offender Employment Stability may not be important consideration. Or, for a very young offender, lack of an Intimate Relationship may be due to incarceration and age, which are out of his control.

92

Absence of a Risk Factor

Absence of a risk factor is not necessarily protective.

It only means there is one less issue to address in treatment.

93

Self-Regulation (1/5)

General self-regulation refers to the individual's ability to control his daily behavior and emotions, manage his resources, and seek and take advantage of prosocial opportunities to be self-sufficient.

- ***General self-regulation*** *includes effective control of one's emotions, thinking and behavior.* Individuals who have difficulty regulating their emotions, such as anger, will inevitably have difficulties in other areas, such as intimate and interpersonal relationships, employment and supervision compliance.
- ***Lifestyle impulsivity*** *refers to low self-control which in turn leads to chronic instability in employment and housing, lack of meaningful daily routines, irresponsible decisions, and limited or unrealistic long-term goals.* This factor is a major determinant of general criminal behavior and sexual recidivism.
- ***Employment Instability*** *refers to the offender's history of working cooperatively with others to support himself financially and to satisfy financial obligations.* Success in employment goes beyond having specific job skills; it refers also to the individual's ability to take responsibility, work with peers, accept direction and correction from an authority figure, and develop a healthy work ethic.

94

Self-Regulation (2/5)

Poor cognitive problem-solving *involves cognitive difficulties in generating and identifying effective solutions to the problems of daily living.* Often, when problems arise, they may ruminate about the situation or select a course of action with a high probability of failure. Problem-solving deficits commonly involve difficulties in problem-recognition and conceptualization, failure to anticipate outcomes, and difficulties generating a suitably wide range of options.

Resistance to rules and supervision *includes rule breaking and opposition to external control.* There appear to be two facets of resistance to rules: a defiant attitude towards authority and a history of oppositional behavior. They can often be traced to childhood and adolescent behavior problems.

"Negative Social Influences" *refers to a social network dominated by individuals who are involved in crime, promote criminal behavior, or weaken the behavioral controls of the offender.* Although social networks can be considered "external" to the offender, individuals tend to choose and recreate consistent environments.

95

Relational Style (3/5)

How one interacts with peers, authority figures and vulnerable individuals plays an important role in the individual's ability to negotiate relationships in healthy ways.

- *Offenders who* ***lack an emotionally intimate relationship with an adult,*** *that is, they have never married or have experienced conflicts or significant problems in intimate relationships, are a higher risk to reoffend.* This includes those who desire intimacy but have been unable to achieve it as well as those who do not desire intimacy. They may have difficulty achieving emotional closeness through mutuality, self-sacrifice, effective communication and negotiation.
- ***Emotional congruence with children*** *refers to feeling that relationships with children are more emotionally satisfying than relationships with adults.* The offender who is emotionally congruent with children may find children easier to relate to than adults, may feel he is still like a child himself, and may believe that children understand him better than adults do. He may feel himself to be "in love" with his child victims, as if the relationship was reciprocal.
- ***Grievance thinking and hostility*** *involves the perception of having been done wrong by the world, feeling that others are responsible for one's problems, and wanting to punish others as a consequence.* Offenders with this schema are preoccupied with obtaining the respect they desire from others and frequently ruminate on vengeance themes. They have difficulty seeing other's point of view and anticipate further wrongs will be perpetrated against them; hence they often hypersensitive to real or perceived slights from others.

96

Sexual Interests (4/5)

- Deviant Sexual Interests is a broad domain that contains several sub-domains, including sexual preference for children, sexualized violence, multiple paraphilias, offense-supportive attitudes and emotional congruence with children.
- ***Sexual preoccupation*** *is an abnormally intense interest in sex that dominates psychological functioning.* Sex is engaged in for itself, as a way of defining the self, or as self-medication. The problematic type of sexual preoccupation is not that associated with romantic love or intense attraction to a specific person.
- ***Sexualized coping*** *refers to using sexual behavior to manage non-sexual stresses and problems.* It may be manifested as masturbation to cope with feelings of boredom, anger or loneliness, or it may involve another person, such as is seen in sexual assaults.
- *Having* ***multiple paraphilias****, which are rare, unusual, or socially deviant sexual interests is considered a robust risk factor that increases an offender's sexual recidivism risk. These interests may be focused on certain types of individuals, objects or activities. Among sex offenders the most common paraphilic disorders are pedophilic disorder, exhibitionistic disorder, voyeuristic disorder, and other specified paraphilic disorder (non-consent).*
- ***Sexual preference for children*** *aged 0-12 years and males ages 0-13 years is also predictive of future recidivism.*
- **Sexualized Violence** *is an interest in sadism or a preference for coercive sex over consenting sex.*

97

Distorted Attitudes (5/5)

Offenders often endorse distorted beliefs and schemas that they use to rationalize or justify their antisocial behavior and sexual offending. Attitudes of entitlement and believing one is a victim of the system are two such commonly held beliefs.

- ***Offense-supportive attitudes*** *are beliefs that justify or excuse sexual offending in general, and are associated with an increase in sexual recidivism.* Examples are beliefs that children can enjoy sex, that adult-child sex is harmless, or that children can be sexually provocative. Rapists may state that rape is justified, harmless or even enjoyable for the woman.
- *Individuals with* ***Hostile beliefs towards women*** *hold negative attitudes towards women that may range from persistent disrespect, to demeaning behavior and physical and sexual aggression towards them.* Women are seen as unworthy of trust and respect. Objectification of women may be evident in sexualized interactions with them. They may hold women in low regard, seeing them as deceitful and manipulative.
- ***Machiavellianism*** *combines a view of others as weak, cowardly, selfish and easily manipulated and involves an interpersonal strategy in which it is viewed as sensible and appropriate to take advantage of others.* Offenders may believe that it is necessary for them to lie or be deceptive to get what they want.
- ***Callousness and Lack of Concern for Others*** *are characterized by egocentricity, a tendency to engage in instrumental rather than affectively warm relationships, poor empathy, and a lack of sympathy for others.* Men with this profile are described as selfish, cynical and willing to be cruel to meet their own needs. They appear indifferent to other people's rights or welfare, except as it influences their own interests.

98

Writing the Report

- A well-written report conveys accurate information useful to the reader in as few words as possible.
- In forensic reports avoid or minimize discussions of issues primarily of interest only to other mental health professionals (e.g., actuarial scoring rules & research) unless there is a clear issue of psycholegal importance. But be prepared to address them in direct testimony or cross-examination. (Consider preparing a cheat sheet for your use.)
- Don't show off. It may come back to bite you. (See above.)
- Do not retry the case, even if you have questions about the defendant's guilt or offenses.
- Protect victims' and witnesses' identities. Reports may be available for many years in many settings. Using victims' names re-victimizes them in perpetuity.
- Report the sources of information. (e.g., PLHQ).

99

Organize!

- One of the most common problems with reports is that they are not well organized (e.g., a discussion of his sexual offenses before a description of his sexual history.)
- Develop and use a report template.
- Start the report before you interview. The template can be your interview road map.
- Develop plain-English diagnostic language that can withstand challenges in court.
- Remember 8th grade composition. Use short paragraphs, each of which focuses on a specific topic or issue.
  - Topic Sentence
  - Body of Paragraph
  - Summary or Transitional Sentence

100

Reduce Clutter

- Don't place raw test data in the body of a report. If you use the Static-99R attach the full coding sheet as an appendix. (A summary of PCL-R scores is an exception.)
- Nobody cares that you attended a Static-99R workshop in 2016.
- Judges and attorneys are less interested in complex statistical arguments and research than you are. Keep it helpful but don't show off.
- Cut to the chase: judges and others have to do a lot of reading.

101

Problems Seen in Reports

- **Sloppy language:** "Mr. Smith was born to his biological mother in Poughkeepsie, New York."
- "Mr. Smith was born to the parents of John and Martha Smith."
- **Complex jargon meant to impress:** "Features of an ego-dystonic attraction to prepubescent males were noted by history."
- **Wordy, but better:** "Mr. Smith's known offense history clearly reflects ongoing sexual interest in boys between the ages of 11 and 13. However, it is very difficult for him to acknowledge and accept this attraction, and he frequently refers to it as "being friends with" or "mentoring" the boys he eventually went on to molest. Admitting this is a sexual attraction could result in Mr. Smith experiencing significant anxiety and depression; thus, he preserves his psychological stability by using cognitive distortions and justifications." *[Note: the latter is speculative, and so should be so-labeled.]*

102

Biasing Language

- Remember that certain words such as "pedophile" or "pornography" can have powerful biasing effects on the reader. Use with extreme caution and qualify your use of them.
- I never use the term, "predatory." It has taken on biasing and legal usage in popular culture.
- A diagnosis of "Pedophilic Disorder" can have different implications for a defendant depending on the nature of his offense behavior. DSM-5 is only a starting point.
- Is *Playboy* pornography? Does it even exist anymore? "Erotic materials" or "explicit erotic materials depicting penetration" etc. may be more useful.
  "Mr. Smith reports spending hours every day looking at erotic media on the internet, some of which depicted penetration and other explicit sexual activities."

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What is Child Pornography?

Be careful using this term.

- The FBI has defined child pornography as the photographic or videographic recording of the sexual abuse of a minor. It is illegal.
- Child *erotica* refers to media that reinforces sexual interest in minors, but that does not depict child abuse. Examples:
  - Nude, partially nude or suggestive photos/videos of minors
  - Photos of children of a specific age or gender corresponding to an offender's victim pool
  - Written media, such as stories with sexual themes involving children

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Ambiguity in Reports

- **Really Bad Ambiguity**
- "Mr. Smith is a homosexual pedophile." *(Is he homosexual and he prefers sex with minors of both genders? Is he a preferential offender who targets boys?)*
- Better: "Mr. Smith's **known** offending history reflects an ongoing and possibly preferential interest in sexual contact with boys between the ages of 10 and 12."

105

Write to Expect Challenges

- The best preparation for court testimony is a well-written, well-annotated report.
- As you write your report, ask yourself, "How will I respond to a challenge of this statement?"
- Because months can elapse between report and testimony, the more complete the report and the better it is documented, the easier and more effective your testimony will be.

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Don't Rely on Spellcheck

- "Mr. Smith reported that he suffers from seasonal allegories."
- "According to Mr. Smith, he was frequently suspended from school for using fowl language."
- "In 1982 Mr. Smith was convicted of Burglary of a Swelling at Night."
- "While he was out on parole, Mr. Smith and Ms. Jones spent time together, commuted, and co-habituated at each other's residences."
- "Mr. Jones reported that he was once treated for a vernal disease."

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Don't Rely on Spellcheck (2)

- "Mr. Jones became violent, attempted to verbally imitate her and then charged at her."
- "Mr. Jones was born to the parents of William and Mary Jones."
- "Mr. Jones said that he was recently diagnosed with diabetes and is now impudent."
- "Sgt. Doe recalls he saw four of his friends killed that year when an IUD exploded next to their vehicle."
- "Mr. Smith has never been married nor has he fathered any known children."

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Should I Quote the Offender in the Report?

- If the language used appears to reflect negative attitudes and not lack of sophistication, consider quoting him to highlight those attitudes.
- Also quote positive statements if they are relevant.
- Don't be coy: if the offender uses quote-worthy profanity it makes no sense to use euphemisms or code (f***) in the report. We're all adults.
- Don't record interviews without the respondent's permission. Keep in mind if you record the interview, the attorneys can demand a copy of the recording. It also means you have to listen to the interview at least twice.

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Tip: Annotate Your Copy of the Report

- As you write your report, use Microsoft Word's "comments" feature to put comments in the margin, such as dates or sources of information. Save a copy of this annotated report for yourself, but save a clean copy for distribution to the attorneys, et al. (You can print a copy to docx or PDF with "no markup" so no comments will appear in the printed copy.)
- When you testify, use your annotated copy.
- In the unlikely event (it's never happened to me) an attorney sees you have an annotated copy and asks to examine it, don't worry—it's no different then penciling in notes, just easier to read.

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Criteria for a Well-Written Forensic Report

- Did the examiner use appropriate *forensic* instruments aimed at addressing risk and treatment?
  - Actuarial instruments
  - Assessment of malingering if needed
- Did the *clinical* assessment include personality assessment, cognitive functioning and mental status with validated and appropriate instruments?
- Did the *clinical* assessment include personality assessment, cognitive functioning and mental status with validated and appropriate instruments?
- Did the examiner discuss the limits of the reliability of psychological testing, actuarial assessment, or other data?
- Did the examiner carefully interpret test data in accordance with the literature associated with the instruments?

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Criteria for a Well-Written Forensic Report (2/4)

- Did the examiner convey this information in such a way that an educated individual could comprehend it?
- Did the examiner take adequate time to interview the defendant?
  - Question: How long should an interview take?
  - Answer: Until the relevant questions are answered.
- If the defendant refused to cooperate, was this noted in the report with caveats about the reliability of the information?
- Did the examiner provide a comprehensive account of the defendant's psychosexual development?
- Did the examiner accurately diagnose mental health and substance abuse disorders and discuss their potential impact on risk and implications for treatment?

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Criteria for a Well-Written Forensic Report (3/4)

- Did the examiner use all reasonably available information to reach a clear conclusion regarding risk and treatment?
- Did the examiner remain focused on the psycholegal issues and not discuss issues that detracted from the purpose of the evaluation?
- Was there evidence the examiner's personal opinions may have biased his/her conclusions?
- Did the examiner minimize use of technical jargon, and when necessary, define terms with which the reader might not be familiar to avoid confusion?
- Did the examiner place any raw test data in an attachment at the end of the report to avoid placing unnecessary detail in the body of the report?

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Criteria for a Well-Written Forensic Report (4/4)

- Did the examiner take reasonable steps to conceal the identities of victims and witnesses?
- Does the report leave the reader feeling he/she "knows" this defendant? Does it provide insight into the defendant's way of thinking & relating to others & how his deviant behavior developed?
- Are the examiner's conclusions and recommendations thorough and do they flow logically from history, documented behavior, actuarial data and clinical findings?
- Does the examiner point out ambiguous issues for which there is insufficient information to draw a reasonable conclusion?
- Do the examiner's opinions regarding the legal issues to be addressed follow naturally from the body of the report?
- Does the examiner directly address and answer the legal issues defined by the statute that authorizes and defines the purpose of the evaluation?

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Providing Testimony

- You can't work in a forensic mental health environment and expect to be untouched by the "forensic" part. That often means clinicians testifying in legal proceedings.
- Testifying in court is a skill and like other skills, you will improve with practice and feedback.
- Testifying can make you a better MHP: you have to think about what you do and why.

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Don't Panic

MHPs are uniquely suited to become effective expert witnesses:

- They have experience thinking on their feet.
- They typically have strong verbal skills.
- They are trained to listen before responding.
- They are introspective, self-aware and can recognize and manage anxiety and stress.

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Types of Witnesses

- If you are a fact witness (e.g., a therapist for the respondent) your testimony will be limited to what you know from personal interaction with or observation of the respondent.
- However, you may be considered a "treating expert" and be allowed to use your experience and expertise to qualify your statements.
- If you are determined to be an expert by the court (after voir dire) you will be allowed much more latitude to express an opinion. You may also rely on hearsay information to form and support your opinions.
- Keep an updated copy of your curriculum vitae and take it with you for reference as needed.

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Preparing for Court

- There is a sweet spot between paralyzing anxiety and agitation. In the middle is healthy arousal, where you are on your toes and prepared for action.
- Prepare, but don't over-prepare. You can't be expected to recall everything without cues or reminders. If an attorney asks you a question about something you wrote and you can't immediately find it, ask where they see the entry.
- Trials and hearings are performances for the judge. If an attorney asks you a question, they likely know the answer, but they want the judge to hear it or they want to emphasize it.

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Dealing with Testimonial Challenges

Direct examination can be relatively easy. The attorney should have prepped you.

Cross-examination can be much more challenging.

- Don't argue or reflexively see a question as a challenge of your opinion or expertise.
- Don't accept the premise of a question if it's incorrect or untrue, especially if it is something you wrote in a report or said in direct examination.
- If a term is misused or distorted, diplomatically correct it.
- Don't worry about agreeing with something a cross-examining attorney says. It can increase your persuasiveness by showing you are objective.
- Sometimes you'll forget or overlook something or make a misstatement. It's OK as long as you're not deliberately falsifying your testimony.

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Dealing with Attorneys

- Attorneys are like everyone else: some are skilled, some inexperienced; some will be aggressive, and others polite and respectful. They are there to represent their client's legal interests and you may find some statements or tactics objectionable. Don't let it get to you.
- The vast majority of attorneys are cordial and professional. They may come at you hard on the witness stand but be genuinely friendly before and after the proceeding.
- The legal profession has its own ethical guidelines.
- Often, attorneys' trial/hearing prep happens at the last minute. Get used to it.
- Ethically, attorneys cannot and will not tell you what to say on the witness stand; however, they may attempt to shape your testimony with their questions.
- A subpoena is not an invitation: it's a command to attend.

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Consider the Question Carefully

Make sure you understand the question before you answer. Attorneys aren't there to make you look foolish.

- Sometimes attorneys try to ask a simple question but by the time they finish it it has grown in length and complexity. Or they might misuse a term or concept and the question makes no sense. If you don't understand the question, ask them to repeat it and if necessary, point out the part you're having trouble understanding.
- Tip: If they can't ask the question more clearly the second time, they probably don't know what they're talking about or are confused about something. Sometimes they won't even try.

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The Angry Attorney

This rarely happens, but sometimes an attorney will be intimidating or hostile (or at least pretending to be) as they ask questions. It may be an attempt to unsettle you or perhaps they have poor people skills.

You are accustomed to dealing with hostility and anger in your clinical practice. Use the same approach here.

- Don't get baited into an argument.
- Don't get defensive.
- Recognize how you are feeling and counteract it with a neutral expression and maybe even silence.

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Dealing with Interruptions

Most attorneys really want to hear what you have to say, but in their eagerness or zeal they may interrupt your answer.

- If they interrupt, stop your answer and when they stop, ask which question they want you to answer.
- Ask them to repeat a question after an interruption.
- Or, simply say "please let me finish my answer." Often, they will apologize because they were getting ahead of themselves.
- If it persists, ask for the Court's assistance in completing your testimony. The judge may admonish the attorney.

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"Yes or No?"

Sometimes, an attorney will attempt to force you to answer a complex question with a yes or no answer.

- "I think a simple yes or no answer to such a complex question could be misleading to the Court."
- "Yes" [or "No"] *and let me tell you why that is my answer.*

The other attorney may follow up on cross/redirect/rebuttal to give you an opportunity to elaborate on your answer.

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Advocacy vs Objectivity

- Be an advocate for your ***opinion***, but don't be rigid and uncompromising. There may be facts you aren't aware of that could change the complexion of a case.
- You may not have heard other witnesses' testimony.
- Although the legal system is an adversarial process, you should not consider yourself to be "on a side" or an adversary, even if you find yourself to be on the opposite side of an issue. When you take such a position you abandon any appearance of objectivity and may instead appear to be a "hired gun" or someone with an agenda.
- Be prepared to modify your opinion in light of the new information. However, be careful with hypotheticals. Hypothetically, anything is possible.
- At the same time, don't automatically accept an attorney's proffer of facts.

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Testifying

- Don't answer non-questions or implied questions. If there's no "?"at the end of the sentence, it's not a question but an editorial comment. Ask, "is that a question" or say, "I didn't hear a question." (It's usually an oversight, not a tactic, but it reminds the attorney you are listening carefully.)
- Don't try to anticipate the attorney's strategy. (They may not have one.) Just answer each question on its own merits.
- Take the time to think if you need to.
- If you need to look up something in a document, say so and take your time.
- If you don't know the answer to something, say so.
- Try to be conversational, not animated, wooden, or professorial.

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Verbal Judo

- Just as none of us knows everything, neither has our profession settled all the issues it is asked to address. A non-defensive admission of ignorance or recognition of the limits of our knowledge lends you credibility.
- Stan Brodsky calls "admit-deny" testimony *verbal judo*:
  - Respond to the question and concede where necessary
  - Continue your response and make *your* point in a positive way.
- This establishes you as someone who is knowledgeable and assertive without being defensive or aggressive.

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Example

- Q: "Dr. Clinician, isn't it true that mental health professionals aren't very good at predicting who will reoffend?"
  - A: We certainly recognize there are limits to our current knowledge about prediction of certain behaviors. [admit] But I think we have to pose the question how well do we do compared to other approaches? Or is there a better approach? While the current state of risk assessment does not allow us to make perfect predictions about behavior, using currently available tools has allowed us to make *better* predictions than in the past, certainly better than chance estimates. [deny by making your point and taking the floor]. A well-done risk assessment also identifies treatment issues.

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Dealing with Challenges to Your Expertise

- Q: "What kind of training do you have in this field?"
  - A: "If you will refer to my curriculum vitae you will see a list of formal training I have had regarding this population and mental health in general. [Lists training] Currently I participate in training with other staff, receive regular supervision from _____ and attend in-service training at ____. I also attend all staff meetings, which includes training and the sharing of clinical information."
- Q: "You are not a Certified Sex Offender Treatment Provider, are you? How can you treat sex offenders without that certification?"
  - A: "Certification is not required to work at ____ or to provide sex offender treatment in Virginia except under certain conditions, such as a provider to Probation and Parole. (I am registered for and receiving supervision to obtain my certification.)"

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Dealing with Efforts to Unsettle You

Remember, nobody emerged at birth ready to practice a profession.

- Q: "Have you ever published in this area?"
  - A: "No. I have confined my professional role to that of a clinician and have not chosen to do research or publish."
- Q: "I see that you have only ___ years of experience treating this population." [Note that this isn't a question.]
  - A: "Although I have been working at ____ for __ months/years, I have been a clinician for ___ years."
  - A: "Although my direct experience in this area has taken place over the past ___ months/years, I receive regular supervision, consultation, and training, as you can see on my CV."

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After Testimony

- It is difficult to do an honest self-assessment of your testimony, especially if it was lengthy.
- Ask a colleague who was present or the attorney who summoned you how you did.
- Spend some time critiquing your answers to questions. No proceeding is perfect.

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