Psychology in the Justice System

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DEDICATION

I dedicate this work to my students who have help shape its content and to the practitioners who live in these areas daily.
Thank you!! ~JL

I dedicate this work to my parents who nurtured my interest in forensic psychology and supported my academic journey. ~LK
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1 INTRODUCTION

The purpose of this book is to introduce aspects of forensic psychology that the reader may not realize are relevant to this field. Forensic psychology can be broadly defined as any area of the legal system where psychology is applied or consulted. This broad definition is integral to the book’s foundation as seemingly disjointed topics are weaved together under the overarching umbrella of forensic psychology.

When one thinks about the utilization of psychology in the legal system, thinking most often begins with some concept of criminal profiling. While profiling criminals is an aspect of forensic psychology, it is only a small portion. Within forensic psychology, there are two distinct areas in which forensic psychologists operate. The two vastly different areas are as follows:

- **Practical/Clinical**: focuses on the ever-present needs of individuals in the legal system.
- **Research**: focuses on gathering and compiling data in a useful manner.

Clinicians focus on populations close to the legal system such as jail or prison inmates, correctional officers, and police officers. Researchers may also focus on populations close to the legal system, but are not limited to those individuals. Researchers may, for example, be interested in the public’s perception of a proposed new law or how closely a constituency agrees with a sheriff’s stances on certain issues.

While both of these areas are important, the purpose of this book is not to explore the distinctions between them. Herein, you will find topics relevant to forensic psychology in the broad sense, but still related to its major subfields, including the following:

- Criminal psychology
• Police and investigative psychology
• Correctional psychology
• Legal psychology
• Victimology

Criminal psychology deals with the psychological reasons why criminals commit the crimes they commit and behave in the ways they behave. Police and investigative psychology addresses the psychological well-being and trauma that accompanies being involved in law enforcement activities, either as a criminal or as a police officer. Correctional psychology focuses on well-being and trauma that accompanies participating in a correctional facility either as a criminal or a correctional officer. Legal psychology concentrates on the psychological repercussions of laws and being involved in the legal process. Victimology, from the standpoint of forensic psychology, is interested in the psychological well-being and trauma associated with being victimized.

Clearly, this text is not exhaustive; however, it provides the reader with a sampling of topics and examples of psychology being used within and regarding the legal system.

Each chapter in this text falls into at least one of the major subfields. Criminal psychology is discussed in Chapters 2 and 3. Police psychology is addressed in Chapters 4, 6, and 9. Investigative psychology is considered in Chapter 12. Correctional psychology is described within Chapters 7 and 10. Legal psychology is discussed in Chapters 8 and 11. Victimology is covered by Chapters 5, 13, and 14.

Chapter 2 begins with an exploration of the work of two theorists related to the field of forensic psychology. The two theorists discussed in Chapter 2 attempted to describe or profile criminals in their day. Cesare Lombroso attempted to explain criminal activity as a result of biological abnormalities while Gabriel Tarde attempted to explain criminal activity as a result of imitation.

Chapter 3 addresses some of the aspects of social learning theory as it applies to aggression and to the development of juvenile delinquency. The psychological theory or social learning is applied to aggression and delinquency in this chapter. The impact of social learning theory is also discussed as it relates to the juvenile justice system.

Chapter 4 examines the history of police civil liability since the addition of Section 1983 of the Civil Rights Act. Though Section 1983 allows violation-of-rights suits to be brought against any member of the government, most of the suits are brought against members of the law enforcement community. This dramatic increase in suits brought against law enforcement personnel has resulted in an increased focus on risk management to reduce the impact of civil liability cases.

Chapter 5 addresses the disparities between all sex workers versus those
who are forced to work as sex workers. The chapter considers the differences between individuals who engage in prostitution of their own free will and those who are forced into the profession through human trafficking and the sex trade. This chapter also discusses the psychological trauma associated with human trafficking and forced prostitution.

Chapter 6 discusses police stress and its extreme – traumatic stress. For centuries, police officers have been dealing with the stress associated with their line of work. This, however, has not made coping with the stress any easier. Officers who are involved in traumatic situations for which they are ill-equipped may fall prey to traumatic stress or Post-Traumatic Stress Disorder (PTSD). Factors that may contribute to the development of PTSD are considered.

Chapter 7 scrutinizes California’s summary parole initiative along with its impact to the community and mental health professionals. The summary parole initiative allows inmates who committed non-serious and non-violent crimes to be released from prison up to 20 months early with very little, if any, supervision. This, in turn, places an increased burden on community services, including mental health services.

Chapter 8 analyzes decision making on the part of judicial actors in the criminal justice system. Models of decision making are proposed and dissected for their applicability to judicial decision making.

Chapter 9 considers the possible constitutional dilemmas related to video policing. Video policing can be effective as a force multiplier, but can also have serious civil liberties implications. Though a feature called pixilation is used to respect the privacy of individual citizens, some groups, such the American Civil Liberties Union (ACLU), are still concerned that those precautions will not be sufficient to address all privacy concerns.

Chapter 10 reviews the development of modern sex offender management policies. California’s Sexually Violent Predator Act (1995) is analyzed in the context of preceding legislation along with the U.S. Supreme Court’s decision in Kansas v. Hendricks. The civil commitment of sexual offenders is compared to both other civil sanctions and the U.S. Supreme Court’s decision in U.S. v. Halper.

Chapter 11 takes a hard look at lethal injection, addressing some apparent behavioral assumptions related to this specific form of the death penalty. Behavioral assumptions include the use of drugs for humans that are not approved for domesticated-animal euthanasia, the theory of three drugs being “better than one”, and the assumption that those individuals administering the three-drug cocktail know what they are doing and are properly trained to administer such drugs.

Chapter 12 discusses the use of hypnosis in the criminal justice system. Many cases have attempted to specify when and how forensic hypnosis should be utilized. Unfortunately, even when hypnosis has been admissible
in court, there have been some cases of adverse side effects to the person undergoing hypnosis. These adverse side effects have resulted in several states adopting strict guidelines for the use of forensic hypnosis cleverly rebranded as “focused meditation”.

Chapter 13 is an evaluation of a legal decision made by the U.S. Supreme Court. When a child enters the office of a school official and is told that their conversations will be kept confidential, it is not often that the child will question that official’s sincerity. Frequently, a child will accept what he or she is being told wholeheartedly. Such was the situation with Jeffery Woodard, a student at a Bible-centered, private school in Florida. Mr. Todd Bellhorn, one of Jupiter Christian School’s employees, was asked to counsel Woodard in regard to his sexual orientation. According to testimony by Woodard, only after receiving spoken assurance that the conversation would remain confidential did he admit his homosexuality. However, confidentiality was not kept at all.

Chapter 14 takes a look at intimate partner violence against males. Men are more likely to be victimized by strangers, but when they are victimized by intimate partners, they tend to experience more serious forms of violence. While intimate partner violence can include men and women from heterosexual and homosexual relationships, this review focuses on male victimizations perpetrated by female intimate partners. Researchers have debated the true rate of male victimization by intimate partners for years; some believe rates are consistently underreported and Western patriarchal traditions contribute to underreporting. Others believe over-emphasis on male victimizations in intimate relationships is nothing more than “feminist backlash,” distracting from the overwhelming prevalence of female victimization by men. The goal of this chapter is to consider male victimization and the barriers to accessing social services that might be needed by these victims.
Every theory about crime and delinquency ever conjured has had its supporters and its critics. Most criminological theories are controversial, and none are flawless, nor do they explain all criminality perfectly. Some examples of an inability to explain all criminality include the classical school of criminology, positivist school of criminology, biological trait theories, and psychological trait theories. The classical school explained crime as solely a manifestation of free will; however, it failed to consider other aspects of the individual, such as one’s upbringing or genetics. The positivist school explained crime as a manifestation of the characteristics of the individual that cannot be controlled by the individual. In other words, the positivist school completely removed the concept of free will from the cause of crime. The biological trait and psychological trait theories focused on their respective disciplines to the complete exclusion, in most cases, of other disciplines. However, there are segments of each theory that can be applied reasonably to many aspects of behavior.

Gabriel Tarde and Cesare Lombroso represent two classic theories whose underlying ideas have clashed in the past. Tarde was wholly convinced of the behavioral side of delinquency, while Lombroso was equally committed to the biological factors contributing to delinquency. The theorists were quite successful at developing their respective theories; therefore, a comparison of their contributions to the field will be analyzed to assess the applicability of the strengths of each respective theory.

*Gabriel Tarde’s Commitment to Behavior*

First, an analysis of Gabriel Tarde and his theory of Imitation of Diffusion in Society is appropriate. Tarde, a French criminologist and sociologist, probably could be considered a theorist who went against the grain since, during his career, the majority of prominent theories were
falling into the category focusing on biological causes (Vold, Bernard, & Snipes, 1998). The foundational precepts of Tarde’s theory of Imitation of Diffusion in Society flew squarely in the faces of those holding a biological perspective because they took into account only the psychological factors that contribute to criminal behavior. However, “Tarde rejected Lombroso’s theory that crime was caused by biological abnormality, arguing that criminals were primarily normal people who, by accident of birth, were brought up in an atmosphere in which they learned crime as a way of life” (Vold, Bernard, & Snipes, 1998). Tarde took his knowledge base of one way in which people can learn, and applied it to the forensic population.

Though Tarde wrote several books on the subject of imitation, the ideas were not original with him. He borrowed ideas from European anthropologists who had originally presented such ideas of imitation applied in the social sciences (Kinnunen, 1996). However, Tarde began his exhibition with a phenomenon produced when large crowds of people gather together in one place. Tarde looked at crowds in general, but he also considered the interactions between family members (Borch, 2005; Borch, 2006). Borch (2005) points out that imitation typically occurs as an inferior member of a group or family observes and mimics the behaviors of a superior member of the same group or family. Illustrated, the children in a household imitate the father, and members of an organization imitate the leader (Brasol, 1927). These correlations make sense, and are supported by social-learning concepts (Mihalic & Elliott, 1997), since when an individual is unsure of group expectations, he or she will study another individual who possesses knowledge of the perceived expectations.

Tarde’s “laws of imitation” are threefold:

- The first law purported by Tarde suggests that the degree to which an individual imitates another is directly related to the amount of time exposed to that individual.
- The second law formally states the above-stated principle: that the superior member is mimicked by the inferior member.
- The third law proposes that old habits or ways of doing something are replaced by newer ways or habits, implying a constant change in the imitated behavior (Vold, Bernard, & Snipes, 1998).

Having the laws spelled out makes it much easier to understand them and to examine each of them more closely. It should be mentioned that “Tarde’s views were not widely disseminated outside France” (Hibbert, 1963).

Research has been conducted that illustrates the first law stated by Tarde. A phenomenon studied and named “social implosion” by Rodney Stark and William Bainbridge considers an intense pull for the attention of a new member of a cult (Myers, 2002). The members of the cult essentially
cut the new member off from any other views that differed from those of the cult. It was the desire of the cult members to create what Tarde called a “social repetition to somnambulism or hypnosis” (Borch, 2005, p. 83). Furthermore, Borch (2012) points out that “crowd members follow the norms of the group not because of contagious suggestion, but because of an extensive pressure towards conformity” (p. 253). It seems as though it was Tarde’s conviction that people, criminals in particular, were walking around as zombies, simply watching others and copying what they saw.

In Tarde’s second law of imitation, he unashamedly focuses on the hierarchical structures found within groups. Bonds that tie individuals to a particular social group are a natural condition. The bond leads the individual, sometimes unconsciously, to imitate, follow and adhere to the norms of living established in and practiced by the community (Brasol, 1927). It is the influence of the senior members of a group that keeps the junior members focused on the beliefs of the organization of which they are a part. Brasol (1927), while speaking of the influence that a superior individual has on an inferior individual, indicates that the inferior individual is most impacted by the habits, thoughts, words, principles, and convictions of the superior individual.

Tarde had to provide room in his theory for changes and adaptations in criminal activity that were prevalent then and now. The third law does not deny, but rather promotes and expects changes in criminal patterns and advances. In the example of the family, the child imitates the parents due to what he/she perceives to be right because it is being perpetuated by father and mother (Brasol, 1927). However, with the mental development that occurs in the child’s mind, there are substantial adaptations that are produced in the growing child (Brasol, 1927). Obviously, there is always room for improvement, especially when law enforcement catches up with the criminal. Therefore, there will always be some individuals who take it upon themselves to invent new deviant behaviors and teach them to individuals less inclined to think for themselves. Ultimately, it can be said of Tarde that he succeeded in stressing the importance of social factors in the causation of crime (Hibbert, 1963). Tarde’s theories may not have made it beyond the borders of Europe, but he influenced others to at least consider the implications of imitation.

_Cesare Lombroso’s Commitment to Biology_

Conversely, Cesare Lombroso in Italy was developing his own theory of crime. His was centered on biological causes rather than behavioral ones. Lombroso’s training was in the fields of medicine and eventually psychiatry. Therefore, his theory based on strictly biological causes is a logical move for him (Vold, Bernard, & Snipes, 1998). The foundational tenant of Lombroso’s theory was his belief in atavism or the idea that criminals were
biological throwbacks, people more primitive and less highly evolved than noncriminal people (Vold, Bernard, & Snipes, 1998). Borrowing heavily from the work of Charles Darwin, Lombroso believed that a criminal could be classified as a murderer by the slant of his forehead or classified as a sexual offender by the fullness of his or her lips (Wilson & Herrnstein, 1985). For Lombroso, physical characteristics were the only causal factors of criminal behavior that were worth analyzing.

Klempner and Parker (1981) summarize Lombroso’s theory into four segments:

• First, each of those who are prone to crime has a physical type that is distinctive and noticeable from his or her birth.
• Second, those who are prone to crime can be recognized by those distinctive characteristics.
• Third, it emphasizes the notion that causality cannot be drawn from these characteristics, but rather aid in the identification of those who would be more prone to certain crimes.
• Fourth, it maintains that the method of intervention for these individuals is relentless socialization.

The summary presented by Klempner and Parker (1981) is most beneficial to a critical analysis of the theory.

The first segment of Lombroso’s theory asserts that, from birth, some individuals are predestined to become criminals; there is little to be done to reverse that fact. Despite Lombroso’s assertion that the behavior of the criminal was predestined for the individual from birth, he also recognized that an individual’s experiences may or may not cause those behaviors to be present in the individual (Wilson & Herrnstein, 1985). Even though Lombroso held that criminals are predestined to conform to delinquent behavior from birth, he had little evidence to substantiate his claims.

The second segment of his theory was what he spent the majority of his time working on and perfecting. Due to his education in medicine, he was primarily concerned with the physical properties – including those of the brain – that made a criminal a criminal. Lombroso’s perspective is summed up by Klempner & Parker (1981): the habitual criminal is essentially made up of an anatomical, physiological, psychological and social stigmatized set of human characteristics. It was the belief of Lombroso that the criminal was less evolved or developed than the typical human being. Lombroso’s methods of gathering information for his book were autopsies of dead criminals and assessments of the physical characteristics of living criminals. However, he never tested his theories by comparing criminals’ characteristics to those of non-criminals (Klempner & Parker, 1981; Vold, Bernard, & Snipes, 1998). Lombroso, along with many others, examined the entirety of his subjects’ bodies to ensure that nothing was overlooked; so much so that he was unsurpassed by the professionals of his time in his
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care for and thoroughness of his subjects (Hibbert, 1963). Despite the controversy of his theory, his methodology and practice of assessing the characteristics in which he was interested was paramount.

Lombroso’s concern for the appropriate causality is intriguing. He maintained that causality could not be drawn from the physical characteristics themselves. However, they were merely predetermined factors in the identification of criminals. Lombroso eventually conceded that society was responsible for more crime than was evolutionary atavism (Wilson & Herrnstein, 1985). The fact of the matter is that Lombroso was bent on the biological factors being the crucial pivot point on which the criminal activity or behavior hinges.

It is quite interesting, in considering the final segment, that Lombroso would consider a behavioral solution to a biological problem. He concludes that the method of intervention for the individual to overcome his or her desires of criminal activity is to engage one’s self in a large amount of social interaction. Lombroso’s ideas were somewhat primitive, considering that the limits to the biological knowledge of his time were significantly different from the limits of today. However, Lombroso did not consider biological remedies to the situations posed by the population in which he was interested. The preferred method of intervention for inmates was rehabilitation rather than retribution (Wilson & Herrnstein, 1985). The preferred method involved a psychological effort as opposed to a physical or biological alternative. Quite possibly, Lombroso’s dedication and passion for his theory pushed him beyond reason and even beyond the ability to analyze his theory objectively, based on inconsistencies between the perceived problem and the assumed most-beneficial intervention.

Conclusion

Though these two theorists have opposing viewpoints, neither of them is completely correct nor completely incorrect. Each one has its strengths and weaknesses. The opposition that each one received served to be somewhat beneficial. Tarde seemed to have a better developed analysis of the available data than Lombroso, but had limited means of testing his theory. Similarly, Lombroso had ample means of testing his theory, but was slightly further off base when it came to actually solving the problem of the cause of criminal activity. Despite the inconsistencies between the two, it is most probable that some form of a combination of these two theories would have fared the test of time much better.

Questions for Discussion

1. a. How are the theories of Tarde and Lombroso different? b. How are they similar?
2. How did Tarde's laws of imitation contribute to his theory?
3. a. What is the foundation for Tarde’s theory? b. What is the foundation for Lombroso’s theory?
4. How have current theories of crime changed since Tarde and Lombroso?
5. Are we still using similar spin-offs of these early theorists or are current theories completely novel and revolutionary?

References
3 THE APPLICATION OF SOCIAL LEARNING THEORY TO THE PSYCHOLOGY OF CRIME

Social learning theory is a psychological theory that gleans concepts from behaviorism and learning theory (Brauer & Tittle, 2012). Social learning theory is a theory of integration whereby people, especially children, learn things from watching other people. The architects of this theory reason that people learn things

• from watching one another,
• from listening to one another, and
• from taking cues from one another (Brauer & Tittle, 2012).

Young girls learn appropriate behaviors from their mothers and older females, while young boys learn appropriate behaviors from their fathers and older males (Barclay, 1982). Additionally, we learn from our peer groups, teachers, and those in the media. “Moreover, recent formulations of social learning theory suggest that learning occurs through both direct and vicarious behavioral reinforcement” (Brauer & Tittle, 2012, p. 159). With the advancement of technology, no longer does one who does the reinforcing need to be a tangible presence in the life of the learner.

Just as people will learn socially acceptable behaviors from those around them, they will also learn socially inappropriate behaviors from those with whom they come in contact. Socially unacceptable behaviors are those which are contrary to cultural norms, but are not necessarily deviant or criminal. The concept of reinforcement is a large part of the motivation behind a specified behavior. Reinforcement may be used to elicit socially unacceptable behavior just the same as it can elicit deviant behavior (Brauer & Tittle, 2012). Reinforcement becomes the driving force or motivator when it is greater than the corresponding punishment for the deviant behavior.
Social Learning and Aggression

One of the easiest ways to learn how to perform a task is by watching some other knowledgeable person perform that task, which is essentially the premise of Social Learning Theory. Many theories are present in society that suggest just how victims of crime become victims. Social Learning Theory is one that has received much notoriety from victimologists. Victimization as a result of social learning begins long before any actual victimization occurs. It is asserted that children who watch parents or older siblings victimize will, in turn, commit criminal activity themselves (Waddell, Lipman, & Offord, 1999).

Since, for the first four or five years of a child’s life, he or she is learning almost completely from the parents, it makes sense that the confines of a family unit would provide the best training ground. The family is able to teach violence, techniques of violence, and approval of violence (Mihalic & Elliott, 1997). With all of this violence being propagated, there must be a victim within the family who is the object of all such aggression. Forsstrom & Rosenbaum (1985) proposed that

[S]eeing one’s mother in a helpless situation transmits the message that women are helpless to control their own lives, thus promoting depression in female children, who would be most likely to identify with the victim/mother. Men witnessing parental conjugal violence might be more likely to identify with the aggressor/father rather than with the victim, thus avoiding depression. (p. 470)

The family history of abuse can contribute to an elevated level of victimization (Chen, Thrane, Whitbeck, Johnson, & Hoyt, 2007). This merely adds to the propensity for an individual to acquire the traits necessary to be afforded the diagnosis of conduct disorder later in life.

In the study conducted by Mihalic & Elliott (1997), repeated victimization was found to be an indicator and “important learning mechanism” for later victimization and aggression (p. 42). This, however, was only the case with males. Females followed a slightly different path. “Females, with their more nurturing personalities, may have stronger emotional reactions to […] violence, thus impacting their lives to a more significant degree” (Mihalic & Elliott, 1997, p. 43). The study neglected to elaborate on how their lives are impacted based on this finding of greater significance. Similarly, it was proposed that violence is “more visible to females, since they often spend more time at home than males, especially at younger ages” (Mihalic & Elliott, 1997, p. 43-44). Gender differentiation is inconclusive in its assessment of aggression and victimization later in the individual’s life. “If strategies for aggression and conflict resolution are learned, not innate, then women are likely to learn different methods than
just because women are likely to learn different methods of aggression does not mean that aggression needs to be learned at all. If aggression is learned, it can be controlled or unlearned.

**Conduct Disorder and Delinquency**

Conduct disorder is a product of aggression (Schaeffer, Petras, Ialongo, Poduska, & Kellam, 2003). “The main ingredients of [conduct disorder] are aggression, antisocial behavior, academic failure, [...] abuse and criminality” (Olsson, Hansson, & Cederblad, 2008, p. 121). Schaeffer and colleagues (2003) found that aggressive behavior significantly predicted the development of antisocial outcomes – namely delinquency, conduct disorder and antisocial personality disorder. Aggression and its subsequent antisocial outcomes place an economic burden on society (Romeo, Knapp, & Scott, 2006). Foster and Jones (2005) found that the expenses paid by government assistance programs for individuals with conduct disorder were $70,000 more per year than those classified as impaired but not with conduct disorder.

Some of the costs associated with conduct disorder are the costs of interaction with law enforcement. Conduct disorder, by its very nature, lends itself to be the catch-all diagnosis for children who come into negative contact with the law. However, “not all youths with conduct disorder have a criminal record, and not all youths with a criminal record have conduct disorder” (Bassarath, 2001, p. 610). The relationships between negative interaction with law enforcement, delinquency, and disorder generally are not distinguished easily by non-professionals (Wakefield, Kirk, Pottick, Hsieh, & Tian, 2006). Wakefield and colleagues (2006) found that lay persons decided to classify some individuals as without a conduct disorder, when they, in fact, qualified under the Diagnostic and Statistical Manual’s (DSM) criteria. This, then, requires a closer cross-reference look at the relationships between those with and without a diagnosable conduct disorder and those who do and do not interact negatively with law enforcement.

Diagnosable conduct disorder is a disorder of adolescence where the propensity for antisocial tendencies arises earlier in childhood (Clarizio, 1997). There are four main areas that are taken into account when a diagnosis of conduct disorder is considered:

- Aggression
- Destruction of property
- Lying or theft
- Serious violation of rules (Clarizio, 1997)

All of these areas, and their corresponding subareas, are closely related to the reasons an adolescent would come into contact with law enforcement,
making his or her behavior delinquent.

Since conduct disorder behaviors do not commence “overnight”, there are contributing risk factors that undoubtedly can be observed. Factors that are both within the individual’s control and not within the individual’s control contribute to the development of conduct disorder. These risk factors include individual factors such as age, gender, Attention-Deficit Hyperactivity Disorder (ADHD), impulse-control issues, temperament, aggression, depression, and academic underachievement (Clarizio, 1997; Holmes, Slaughter, & Kashani, 2001).

Additional risk factors are psychosocial and environmental, genetic and nutritional, and neurological (Holmes et al., 2001). Psychosocial and environmental factors that contribute to conduct disorders are lower educational- and occupational-levels of one’s father and living with a single parent or relative (Al-Banna, Al-Bedwawi, Al-Saadi, Al-Maskari, & Eapen, 2008). Genetic and nutritional factors refer to the biological predisposition established by the individual’s family and the level of nutrition experienced during childhood. Similarly, neurological deficits were obvious in a study conducted by Olvera, Semrud-Clikeman, Pliszka, & O’Donnell, 2005). The deficits observed by Olvera and colleagues (2005) included verbal impairments, executive-functioning impairments and visual integration and facial-recognition impairments.

Implications for the Juvenile Justice System

It is true that a burden falls on the juvenile justice system to maintain order within the juvenile population. Fortunately, with the rise of conduct disorder prevalence in the juvenile justice system, there has not been a corresponding increase in stigmatism regarding mental illness in juvenile courts (Murrie, Boccaccini, McCoy, & Cornell, 2007). Murrie and colleagues (2007) found that the most common method of handling juveniles with documented psychopathy or conduct disorder was referral out to a capable mental facility. Even though this mode is being employed, there are still gaps and differences between jurisdictions (Murrie et al., 2007).

There is a belief that juvenile justice might be better served in a government treatment-program rather than in a government institution behind bars. Several studies have been conducted that concluded that the best method of rehabilitation is to create better, more cost-effective programs for juvenile offenders (Al-Banna et al., 2008; Chen et al., 2007; Foster & Jones, 2005). The consensus of Foster and Jones (2005) regarding the reallocation of funding is that money should be taken from dealing with problem behaviors and spent on preventing those behaviors. Similarly, Al-Banna and colleagues (2008) contend that evidence-based interventions are the only reasonable means of treatment.
Conclusion

The underlying principles of social learning theory can be seen in many aspects of everyday life. Social learning can serve an effective, positive role in society. However, social learning is also used to effect negativity and antisocial behavior in society. When social learning results in negative atmospheres, it can be addressed and reversed. The antisocial behavior must be perceived as such, and there must be a pointed effort, on the part of the one being observed, to change the behavior. With social learning, it is not sufficient to hold to the adage: “do as I say, not as I do.”

Questions for Discussion

1. How do males and females differ in their reaction to victimization from childhood to adulthood?
2. From your own experience, are children who witness violence more likely to become victims or criminals when they become adults?
3. a. What are the four main areas taken into account when diagnosing a conduct disorder? b. How can they be seen playing out in the lives of adult offenders?
4. To what extent would juvenile delinquents be served by a merger of a juvenile justice system and a mental health court system?

References


4 POLICE CIVIL LIABILITY

History of Title 42 United States Code § 1983

The history of Section 1983 (42 U.S.C. § 1983) litigation began in the years immediately following the Civil War. In 1866, the United States Congress passed the Civil Rights Act in order to combat the activities of the Ku Klux Klan. Although the Act did not target the Klan specifically, the legislation did establish Federal criminal penalties for state and local government officials who failed to protect the rights of their citizens (Kappeler, Kappeler, & del Carmen, 1993; Means 2004; Ross, 2006; Worrall, 2001). In 1871, Congress added civil penalties through Title 42 United States Code § 1983 to

- redress laws that were unconstitutional;
- allow cases involving constitutional violations to be heard in Federal court, if no options in state courts were available; and,
- allow cases involving constitutional violations to be heard in Federal court in cases where options were technically available in state courts, but they were not being practiced (Kappeler et al., 1993; Ross, 2006, p. 60).

Before, civil cases involving constitutional violations could only be addressed through common law, leaving them in the jurisdictions of the state courts (Ross, 2006). Now, potential litigants had other options.

According to Section 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be
liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress [...]. (42 U.S.C. § 1983)

The legislation has four important provisions. First, only a protected person can file a suit under Section 1983, meaning the person must be citizen or a person who is governed under the jurisdiction of the United States. Second, the individual or the entity of whom the suit is against must have been acting under the “color of the law,” meaning within the scope of official duties. Third, either a person or government entity may be liable. Originally, the words “every person” were narrowly defined by the Supreme Court to mean only individual persons. Since then, new cases have expanded that meaning to include government entities. Finally, and most importantly, in order to bring suit under Section 1983, a constitutional violation must have occurred (Kappeler et al., 1993; Ross, 2006, p. 61). Even though this legislation created an avenue to address both United States Constitutional violations and the state officials who ignored them in Federal court, Section 1983 was sparsely used for 90 years, leaving state tort actions for citizens to handle disputes (Kappeler et al., 1993; Means 2004; Ross, 2006; Worrall, 2001).

Several reasons exist for the failure to successfully bring Section 1983 suits during the decades following the enactment. First, the Ku Klux Klan was an extremely powerful organization with members holding significant government positions, especially in the South. Attempting to sue violators may hardly have seemed worth it to victims – reprisals were a reality and lawsuits took time and money (Means, 2004). Second, interpretation of the statute proved to be difficult. The rights guaranteed by the United States Constitution were narrowly defined by the United States Supreme Court, and, up until the 1950s and 1960s, the Bill of Rights was not actively being applied to the states (Ross, 2006). Third, Section 1983 provided protections against acts committed by officials that were not sanctioned by the government but by officials and caused constitutional violations (Kappeler et al., 1993; Means 2004; Ross, 2006). Section 1983 was not clear as to whether these circumstances warranted state action.

The application of Section 1983 in litigation began changing dramatically with the case of *Monroe v. Pape* (1961). Prior to the *Monroe* ruling, bringing suit against criminal justice professionals was difficult. The U.S. Supreme Court decision broadened the meaning of the statute to include actions of criminal justice professionals who violated constitutional rights while acting under public policy or law. Now, Section 1983 could be used to sue state and local officials who misused their positions of power to violate constitutional rights. Despite the expansion of the meaning of “color of the law,” the U.S. Supreme Court continued with its previous interpretation