#### Volume 1

### CHAPTER 1. EXPERT EVIDENCE IN THE COURTS

§ 1:1 Introduction

### I. THE TREATMENT OF EXPERT EVIDENCE: FROM THE SUBLIME TO THE RIDICULOUS

- § 1:2 The American approach
- § 1:3 The U.K. experience
- § 1:4 The Canadian reforms
- § 1:5 The Australian failure

### II. THE GOOD, THE BAD AND THE UGLY OF FORENSIC EVIDENCE

- § 1:6 The good
- § 1:7 The bad
- § 1:8 The ugly

### III. JUDGES AS GATEKEEPERS OF SCIENCE AND THE LAW

§ 1:9 A judge's perspective: Judge Stephanie Domitrovich

### CHAPTER 2. ADMISSIBILITY, DIRECT AND CROSS EXAMINATION

- § 2:1 Introduction
- § 2:2 The Daubert trilogy
- § 2:3 Scientific reasoning
- § 2:4 Scientific reasoning—Methodology
- § 2:5 Scientific reasoning—Hypothesis testing
- § 2:6 Scientific reasoning—Error rates
- § 2:7 Scientific reasoning—Validity

§ 2:8	Scientific reasoning—Reliability
§ 2:9	Scientific reasoning—Peer review
§ 2:10	Scientific reasoning—Datum of a discipline
§ 2:11	Scientific reasoning—Proficiency testing
§ 2:12	Scientific reasoning—Ipse dixit/subjective belief
§ 2:13	Fit of expert and of evidence
§ 2:14	Expert reliability criteria
§ 2:15	An expert evidence decisional template in three
	action steps
§ 2:16	Action step one—Helpfulness determinations
§ 2:17	Action step two—Qualification determination
§ 2:18	Action step three—Reliability determinations:
	Quantity, quality & fit
§ 2:19	Selection of expert & direct exam
§ 2:20	Expert selection criteria
§ 2:21	The process of direct examination
§ 2:22	Selection of expert and cross examination
§ 2:23	Voir dire questions regarding scientific knowledge
§ 2:24	Voir dire questions regarding scientific
	methodology
$\S 2:25$	Cross-examination strategy

### CHAPTER 3. FORENSIC MEDICINE, PSYCHIATRY & PSYCHOLOGY

§ 3:1 Introduction

### I. FORENSIC MEDICINE, PSYCHIATRY & PSYCHOLOGY—A PRIMER

§ 3:2	The practice of medicine
§ 3:3	The development of forensic medicine
§ 3:4	The development of psychiatry
§ 3:5	The value of biological psychiatry
§ 3:6	Psychiatric education and training
§ 3:7	The development of forensic psychiatry
§ 3:8	The development of psychology
§ 3:9	The development of forensic psychology
§ 3:10	Are the behavioral sciences of psychiatry and psychology really science?
§ 3:11	Basic statistical concepts—Overview

#### II: THE GOOD

§ 3:12 Accurate decision-making: Methodological issues

§ 3:13 Accurate decision-making process in psychiatry and psychology

#### III. THE BAD

- § 3:14 Poor decision-making in medicine
- § 3:15 Poor decision-making in psychiatry and psychology

#### IV. THE UGLY

- § 3:16 Cognitive errors and violations of clinical axioms
- § 3:17 Conclusion

### CHAPTER 4. PROBABILITY AND STATISTICS FOR LAWYERS

#### I. UNDERSTANDING THE BASICS

§ 4:1 Introduction

#### II. THE LANGUAGE OF STATISTICS

- § 4:2 Overview
- § 4:3 Descriptive and inferential statistics
- § 4:4 Variable
- § 4:5 Populations and samples
- § 4:6 Central tendency; mean, median, mode, and range
- § 4:7 Scales of measurement
- § 4:8 Causation and correlation
- § 4:9 Null hypothesis
- § 4:10 Statistical significance
- § 4:11 Statistical power
- § 4:12 Effect size
- § 4:13 Bias in research
- § 4:14 Validity
- § 4:15 Face validity
- § 4:16 Content validity
- § 4:17 Construct validity
- § 4:18 Internal validity
- § 4:19 External validity
- § 4:20 Statistical conclusion validity
- § 4:21 Criterion-related validity

§ 4:22 Reliability § 4:23 Test-retest reliability § 4:24 Interrater reliability § 4:25 Internal consistency reliability § 4:26 Assessment terms § 4:27 Norms § 4:28 Normal distribution and standard deviation § 4:29 Non-normal distributions § 4:30 Percentiles § 4:31 t-scores § 4:32 z-scores § 4:33 t-scores versus z-scores § 4:34 Standard error § 4:35 Confidence level and confidence interval § 4:36 Differential diagnosis § 4:37 Chi square § 4:38 **ANOVA** § 4:39 Regression § 4:40 **Probability** Bayes' theorem § 4:41 § 4:42 Error rates § 4:43 Base rates § 4:44 Sensitivity and specificity § 4:45 Likelihood ratio § 4:46 Predictive values Relative risk § 4:47 § 4:48 Odds ratio

### III. "THE GOOD"—THE PROPER USE OF STATISTICS IN COURT

- § 4:49 Overview
- § 4:50 Examples of forensic applications of statistics
- § 4:51 A note on expert ethics
- § 4:52 A note on expert ethics—Expert qualifications
- $\S~4{:}53~$  A note on expert ethics—Guiding principles
- $\S~4{:}54~$  A note on expert ethics—Assumptions
- § 4:55 A note on expert ethics—What they should review

### IV. "THE BAD": FAULTY USE OF STATISTICS IN COURT

§ 4:56 Overview

- § 4:57 Case examples § 4:58 Myths about sta
- § 4:58 Myths about statistics in the courts
- § 4:59 Fallacies
- § 4:60 The base rate fallacy
- § 4:61 Prosecutor's fallacy
- § 4:62 Defense lawyer's fallacy

### V. "THE UGLY": THE MISUSE OF STATISTICS IN COURT

- § 4:63 Overview
- § 4:64 The product rule gone horribly wrong
- § 4:65 New and improved election shenanigans
- § 4:66 Statistical clash over parental alienation research

### CHAPTER 5. INDEPENDENT MEDICAL EXAMINATIONS

- § 5:1 Introduction
- § 5:2 A brief history of IMEs
- § 5:3 Necessary qualifications of IME examiners
- § 5:4 The contract
- § 5:5 Necessary elements (or not) of a proper IME
- § 5:6 Necessary elements of a proper IME report
- § 5:7 Common legal issues involving independent medical examinations
- § 5:8 Expert testimony
- § 5:9 Direct examination of the IME examiner
- § 5:10 Cross examination of the IME expert
- § 5:11 The good—Cases where proper IMEs were introduced
- § 5:12 The bad—Cases where problematic IMEs were introduced
- § 5:13 The ugly—Cases where the IME never should have been introduced

#### CHAPTER 6. THE FORENSIC AUTOPSY

- § 6:1 Overview
- § 6:2 Forensic pathologist versus hospital pathologist
- § 6:3 Anthropologist's role
- § 6:4 Wound and weapon compatibility
- § 6:5 When is an autopsy needed?
- § 6:6 Asphyxia

#### LITIGATOR'S HANDBOOK

§ 6:7	Gunshot wounds
§ 6:8	Shotgun injury
§ 6:9	Knife wounds
§ 6:10	Blunt injuries
§ 6:11	Alcohol
§ 6:12	Marijuana
§ 6:13	Falls
§ 6:14	Child and elder abuse
§ 6:15	Scalding
§ 6:16	Restraint
§ 6:17	Petechial hemorrhages
§ 6:18	Strangulation
§ 6:19	Conscious pain and suffering
§ 6:20	Medico-legal autopsy report
§ 6:21	Conclusion

### CHAPTER 7. SEXUAL ABUSE EXAMINATIONS

#### I. INTRODUCTION

§ 7:1	Basic concepts
§ 7:2	The specialty of sexual abuse evaluation
§ 7:3	Normal & abnormal findings
§ 7:4	The absence of physical findings
§ 7:5	Evidentiary issues with physical findings (and
	their absence)
§ 7:6	The purpose & timing of the exam

#### II. KNOWLEDGE BASICS

§ 7:7	Minimum core content
§ 7:8	Beneficial knowledge
§ 7:9	Interpreting medical findings in suspected sexual abuse
§ 7:10	Basic anatomy and terminology
§ 7:11	Normal variations
§ 7:12	Dermatologic and related disorders
§ 7:13	Infectious disorders
§ 7:14	Miscellaneous disorders
§ 7:15	Sexual abuse with no findings
§ 7:16	Definitive findings
§ 7:17	Scholarly research regarding findings

lxiv

- § 7:18 Scholarly research into children's language
- § 7:19 Probability and likelihood
- § 7:20 Case study: Bayes's Rule and data that cannot justify the conclusion
- § 7:21 Case study: Bayes's Rule and data that cannot justify the conclusion—Girl child
- § 7:22 Case study: Bayes's Rule and data that cannot justify the conclusion—Boy child

### III. HOW TO PROPERLY CONDUCT A CSA EXAMINATION

§ 7:23 Methodology of the exam

### A. CLINICAL HISTORY AND DOCUMENTATION

- § 7:24 General considerations
- § 7:25 Review of systems
- § 7:26 Legal considerations of the history (or why medical experts should leave sexual assault interviewing to trained forensic interviewers)

#### B. THE FULL BODY EXAMINATION

- § 7:27 Conducting the examination
- § 7:28 Genital examination
- § 7:29 Collecting forensic evidence

#### IV. SELECTED CASES

- § 7:30 The good
- § 7:31 The bad
- § 7:32 The ugly
- § 7:33 Conclusion

#### CHAPTER 8. FORENSIC USE OF DNA

§ 8:1 Introduction

### I. OVERVIEW: FROM THE CRIME SCENE TO THE CRIME LAB

- § 8:2 What is DNA?
- § 8:3 How is DNA used to investigate crimes?
- § 8:4 What sources of DNA evidence are typically collected from crime scenes?

§ 8:5	Accurate chain of custody records	
§ 8:6	The evidence: Prioritization, storage, and processing	
§ 8:7	Evidence examination: Illumination, photography, and microscopy	
§ 8:8	Processing evidence: Prior to the production of DNA typing data	
§ 8:9	The Nobel Prize-winning work that facilitated forensic human identification	
§ 8:10	The goal of the "molecular photocopier": Comparative DNA matches	
§ 8:11	RFU thresholds, analytical artifacts, and DNA data interpretations	
§ 8:12	DNA interpretation challenges, and the impact of various forms of bias	
§ 8:13	The increasing power and prevalence of Y-STR typing technology	
§ 8:14	When investigations inexplicably avoid additional DNA inquiries	
II. "THE GOOD"—DNA IN OUR CRIMINAL JUSTICE SYSTEM		
§ 8:15	Introduction: Scientific strategies of biological	
3 0.120	evidence/DNA examinations	
§ 8:16	The development of searchable DNA databases	
§ 8:17	DNA Databases, cold casework initiatives, reversal of wrongful convictions	
§ 8:18	Understanding the work conducted by Forensic Biologists	
§ 8:19	DNA transfer events: "Every contact leaves a trace"	
§ 8:20	Beyond Locard's Principal: The reality of DNA transfer events	
§ 8:21	Transfer events: Whose DNA is it?	
§ 8:22	Reporting conclusions from LCN DNA, allelic dropout, and DNA mixtures	
§ 8:23	LCN, DNA mixtures, and the impact of cognitive bias on RFU thresholds	
§ 8:24	The history of DNA mixture misinterpretations	
§ 8:25	The fundamentals of assessing a possible DNA mixture	
§ 8:26	Population statistical calculations—Giving weight to: "cannot be excluded"	

§ 8:27 Recent developments in the utilization of probabilistic genotyping software

### III. "THE BAD"—WHEN GOOD INTENTIONS GO WRONG

§ 8:28	Introduction
§ 8:29	Ancient/cold case DNA and contamination
§ 8:30	Lacking awareness of DNA contamination and corrective actions in crime labs
§ 8:31	Vignette—Highly-publicized contamination of cold case evidence
§ 8:32	Vignette—Another well-known instance of cold case contamination
§ 8:33	Limitations, misinterpretations, and misrepresentations
§ 8:34	Vignette—A problematic investigation
§ 8:35	Error rates and how errors manifest themselves in forensic DNA analysis
§ 8:36	Vignette—Bad "likelihood ratio" statistics
§ 8:37	Vignette—Substandard investigations and bad crime lab interpretations
§ 8:38	Vignette—Substandard investigation and faulty analysis
§ 8:39	How the prosecution/defense might respond to the claim: "We have DNA"
§ 8:40	Vignette—A bungled investigation. But "We have DNA"
§ 8:41	Speculation about how or how much
§ 8:42	Vignette—Interpretations can be faulty—Even from the FBI Crime Lab
§ 8:43	DNA in sexual assault cases
§ 8:44	Vignette—Residential effects and a failure to consider the evidence
§ 8:45	Vignette—Residential effects and the FBI crime lab
§ 8:46	Vignette—Residential effects and domain irrelevant information

### IV. "THE UGLY": FOOLS—FRAUD—AND THE FBI

- § 8:47 Introduction
- § 8:48 Vignette—A failure to explore DNA from a presumed getaway vehicle

§ 8:49	Vignette—Failure to explore DNA from a murder weapon
§ 8:50	Vignette—Failure to explore DNA from yet another murder weapon
§ 8:51	Vignette—Residential effects in a bungled investigation
§ 8:52	The tendency of jurors to harbor unrealistic confidence in crime labs
§ 8:53	Vignette—When the "miracle" is simply a contamination event
§ 8:54 § 8:55	From incompetence to outright fraud Recent developments in the forensic use of DNA

#### Volume 2

#### CHAPTER 9. THE ASSESSMENT OF EYEWITNESS MEMORY FOR PEOPLE AND EVENTS

#### I. INTRODUCTION

§ 9:1	Eyewitness memory for people and events
§ 9:2	The history of the forensic application of the science of memory
§ 9:3	Post hoc evaluation of eyewitness evidence
§ 9:4	The impact of expert evidence on legal decision making
§ 9:5	The scope of eyewitness memory for people and events
§ 9:6	How will eyewitness memory be dealt with in this chapter?

#### II. THE SCIENCE

- § 9:7 The research on factors that impact recognition memory for people
  § 9:8 Encoding information in memory
  § 9:9 Storing information in memory
- § 9:10 Retrieval

#### III. FORENSIC APPLICATION

§ 9:11 Treatment of eyewitness memory in forensic application

lxviii

- § 9:12 United States case law on identification
- § 9:13 Canadian case law on identification
- § 9:14 Australian case law on identification
- § 9:15 United Kingdom case law on identification
- § 9:16 DNA exoneration cases

#### IV. HANDLING EYEWITNESS IDENTIFICATION EVIDENCE WELL (THE GOOD)

- § 9:17 Criterion set for minimally acceptable principles and methodology for eyewitness evidence
- § 9:18 Expert witness qualifications
- § 9:19 Questions on qualifications
- § 9:20 Voir dire questions for experts in eyewitness identification
- § 9:21 Sample direct examination questions

## V. WHAT EYEWITNESS EXPERT TESTIMONY LOOKS LIKE WHEN HANDLED BADLY (THE BAD)

- § 9:22 Challenging expert witnesses
- § 9:23 How the criterion set for expert eyewitness testimony may be violated
- § 9:24 Sample cross-examination questions

#### VI. CONTROVERSIES FACED WHEN ADDRESSING THIS SUBJECT MATTER FORENSICALLY (THE UGLY)

§ 9:25 Advances in the science of memory and the law

#### CHAPTER 10. FALSE MEMORIES

#### I. OVERVIEW

- § 10:1 Introduction
- § 10:2 Children's false memories
- § 10:3 False memories and witness reliability
- § 10:4 Competency and credibility
- § 10:5 The role of an expert witness
- § 10:6 The role of the expert—Common knowledge?
- § 10:7 The role of the expert—Common misperceptions about allegations of abuse

§ 10:8	The role of the expert—Impact of an expert witness
§ 10:9	The role of the expert—Qualifying expert witness
II. T	HE BAD
§ 10:10	Overview
§ 10:11	Children's suggestibility
§ 10:12	Adult suggestibility
§ 10:13	The impact of naturally occurring conversations
§ 10:14	Lack of properly recording all interviews
§ 10:15	The difficulty for interviewers to reconstruct interviews
§ 10:16	Differing clinical vs forensic goals
§ 10:17	Anatomical dolls and drawings
§ 10:18	Interviewer bias
§ 10:19	Lack of any documented alternative hypotheses
§ 10:20	Negative effects of cross-examination
§ 10:21	The negative impact of parental questioning
§ 10:22	Adults can't tell
§ 10:23	Sample direct examination questions
§ 10:24	Sample cross-examination questions
III. T	THE UGLY
§ 10:25	Overview
§ 10:26	Kern County, California 1980s
§ 10:27	Kern County, California 1980s—The McCuans & Kniffens
§ 10:28	Kern County, California 1980s—Jeffrey Modahl
§ 10:29	Kern County, California 1980s—John Stoll
§ 10:30	The McMartin Preschool
§ 10:31	Margaret Kelly Michaels

#### CHAPTER 11. LITIGATION OF RECOVERED-REPRESSED MEMORY, DISSOCIATIVE AMNESIA, TRAUMA, AND FALSE MEMORY CASES

§ 11:1 Introduction § 11:2 Terminology

The San Antonio Four

Conclusion

lxx

§ 10:32

§ 10:33

§ :	11:3	Caution to attorneys handling RRM-MPD-DID cases: The need for multi-disciplinary, science-intensive teams
§ :	11:4	Selecting experts from the relevant scientific communities
§ :	11:5	Nineteen essential areas of expertise to exclude RRM-MPD-DID evidence
§ :	11:6	Successful Frye-Daubert-Kumho challenges to exclude RRM-MPD—DID expert testimony
§ :	11:7	"The good": Highly-effective, science-intensive litigation methodologies
§ :	11:8	Nineteen essential areas of expertise for lawyers and experts in RRM-MPD-DID psychotherapy- tainted memories and related cases
§ :	11:9	Exposing limitations of "experts" in such cases & sample voir dire
§ :	11:10	"The bad": What this subject matter looks like when handled badly
§ :	11:11	"The ugly": The return of RRM-MPD to courtrooms due to the failure to conduct proper Frye-Daubert inquiries
§ :	11:12	Conclusion

## CHAPTER 12. INTERROGATIVE SUGGESTIBILITY

§ 12:1	Introduction
§ 12:2	False promises of leniency or threats of harm
§ 12:3	Police lies about the evidence
§ 12:4	Fact-feeding or contamination
§ 12:5	Vulnerability of the suspect
§ 12:6	Interrogative suggestibility expertise in forensic application
§ 12:7	Understanding the need for a forensic expert in interrogations and confessions
§ 12:8	Choosing a qualified expert
§ 12:9	Controversies faced when addressing this subject matter in court
§ 12:10	Controversies regarding admission of expert testimony about false confessions
§ 12:11	Consequences of false confessions—Case examples
8 12.12	Directions for the future

### CHAPTER 13. CAPACITY TO WAIVE MIRANDA RIGHTS

§ 13:1	Overview of the law
§ 13:2	United States
§ 13:3	Canada
§ 13:4	United Kingdom
§ 13:5	Australia and New Zealand
§ 13:6	Overview of the science applicable to <i>Miranda</i> waiver
§ 13:7	Reviewing legal standards and psychological theory to identify relevant psychological constructs
§ 13:8	Overview of research addressing <i>Miranda</i> right comprehension and <i>Miranda</i> waivers
§ 13:9	Examples in which courts applied the science properly
§ 13:10	Examples in which courts applied the science poorly
§ 13:11	Direct and cross examination

# CHAPTER 14. ASSESSMENT OF COMPETENCE AND CRIMINAL RESPONSIBILITY

§ 14:1 Introduction

#### I. CRIMINAL COMPETENCIES

§ 14:2	Competence as a concept
§ 14:3	Competence to stand trial
§ 14:4	Legal standard for competence to stand trial
§ 14:5	Burden of proof for competence to stand trial
§ 14:6	Fifth Amendment implications of trial
	competence evaluations
§ 14:7	Treatment of defendants found incompetent
§ 14:8	Competence to stand trial outside the United
	States
§ 14:9	Other criminal competencies
§ 14:10	Competence to waive Miranda rights
§ 14:11	Competence to proceed with extradition
14:12	Competence to plead or refuse plea
§ 14:13	Competence for self-representation
§ 14:14	Competence to waive appeals

lxxii

Competence to be executed
Criminal competency evaluations—Overview
Criminal competency evaluations—Questions on direct-examination
Criminal competency evaluations—Common errors in criminal competence evaluations
Criminal competency evaluations—Questions on cross-examination
Criminal responsibility and related defenses
Basic concepts of mens rea and actus reus
The insanity defense
Insanity defense history and insanity standards
Insanity outside the United States
Other defenses of mens rea
Insanity evaluations—Overview
Insanity evaluations—Questions on direct-examination
Insanity evaluations—Common errors in insanity evaluations
Insanity evaluations—Questions on cross-examination
Conclusion

#### CHAPTER 15. MALINGERING ASSESSMENT, INTERPRETATION, AND EXPERT TESTIMONY

- § 15:1 Introduction
- § 15:2 The legal backdrop
- § 15:3 The assessment of malingering
- § 15:4 Critical issues in the assessment of malingering
- § 15:5 Summary and recommendations

#### CHAPTER 16. INVOLUNTARY COMMITMENT OF THE MENTALLY ILL

- § 16:1 Introduction
- § 16:2 What is involuntary commitment?
- § 16:3 A brief history of involuntary commitment in the United States
- § 16:4 Requisites for involuntary commitment
- § 16:5 Standard of proof required for involuntary indefinite confinement
- § 16:6 Involuntary confinement of minors

#### LITIGATOR'S HANDBOOK

	LITIGATOR'S TIANDBOOK
§ 16:7	Least restrictive alternative principle
§ 16:8	Elements necessary for involuntary commitment
§ 16:9	How is "mental illness" defined for the purposes of civil commitment?
§ 16:10	Defining dangerousness for purposes of civil commitment
§ 16:11	Gross impairment/inability to care for self for purposes of civil commitment
§ 16:12	Criminal commitment
§ 16:13	Justice diversion programs
§ 16:14	Pre-trial commitment
§ 16:15	Post conviction mental health treatment
§ 16:16	Insanity
§ 16:17	Post serving sentence—Dangerousness
§ 16:18	Sexually Violent Predator (SVP) or Sexually Dangerous Person (SDP) provisions
§ 16:19	Community notification of convicted sexual offenders
§ 16:20	Involuntary administration of medications
§ 16:21	Procedural aspects of involuntary civil commitment
§ 16:22	Assisted Outpatient Treatment Program— Kendra's Law
§ 16:23	Conditional release
§ 16:24	Preventive involuntary outpatient commitment
§ 16:25	What's an attorney (or judge) to do?
CHAI	PTER 17. NEUROPSYCHIATRIC
AND I	NEUROBEHAVIORAL EVALUATION,
	SATION AND DAMAGES IN TORT
CASE	
	Introduction

Nature, scope, and time required for neuropsychiatric/neurobehavioral examinations § 17:6 Neurologists

examinations

Neuropsychiatrists

Differences between a neuropsychiatrist and a § 17:7 neuropsychologist

Neuropsychologists and "neuropsych"

The critical importance of understanding the uses and limits of "localization" dogma

lxxiv

§ 17:2

§ 17:3

§ 17:4

§ 17:5

§ 17:8	Differences between a neuropsychiatrist and a neurologist
§ 17:9	Presence of third party observers at examination
§ 17:10	Dual roles: Ethical conflicts with therapeutic and forensic roles
§ 17:11	Minimally acceptable principles and methodology including voir dire, direct examination and cross-examination questions
§ 17:12	Sample voir dire and cross-examination questions
§ 17:13	A new defense strategy: "Fraud on the court"
§ 17:14	Bad science and ugly court decisions

### CHAPTER 18. CHILD PROTECTION ASSESSMENT

#### I. INTRODUCTION

- § 18:1 A brief history of child protection
- § 18:2 Scope of chapter

### II: THE GOOD: MINIMALLY ACCEPTABLE PRINCIPLES

- § 18:3 The need for such principles
- § 18:4 Minimal guidelines for forensic mental health evaluations
- § 18:5 Minimal guidelines for interviewer/investigator
- § 18:6 Minimal guidelines for expert witnesses
- § 18:7 Voir dire for expert witnesses

### III. THE BAD: WHEN POOR QUALITY EVIDENCE IS ADMITTED

- § 18:8 Overview
- § 18:9 Eliciting a false report of abuse
- § 18:10 Failing to acknowledge/respond to evidence of abuse
- § 18:11 Other issues

### IV. THE UGLY: THE HORRIBLE CONSEQUENCES OF GETTING IT WRONG

§ 18:12 The consequences of limited, unethical, or biased investigations in the child protection context

### CHAPTER 19. CHILD CUSTODY EVALUATIONS

§ 19:1 Introduction

#### I. THE HISTORY OF CUSTODY EVALUATIONS IN THE COURTS AND COMPLEX PSYCHOLOGICAL ISSUES IN CHILD CUSTODY DISPUTES

The history of child custody evaluations in family courts
Scope of the task: Complex issues in child custody work
General divorce research and child adjustment
High conflict
The alienated child (currently referred to as refuse/resist cases)
Domestic violence
Sexual abuse allegations
Relocation, including international relocation
Developmentally sensitive parenting plans
To recommend or not recommend
The role of the consultant and expert witness

# II. THE LEGAL BASIS FOR CHILD CUSTODY EVALUATIONS AND EXPERT WITNESS CONSULTATION AND TESTIMONY, AND THE ROLE OF RECOMMENDATIONS

§ 19:13	Legal basis
§ 19:14	Statutory law
§ 19:15	Important case law regarding the practice of child custody evaluations or expert witness testimony
§ 19:16	Important case law regarding child custody evaluator bias considerations
§ 19:17	Domestic violence
§ 19:18	Relocation
§ 19:19	Changed circumstances
§ 19:20	Sibling issues
§ 19:21	Grandparent visitation

lxxvi

§ 19:22 The Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

### III. CHILD CUSTODY REPORTS—VARIOUS OUTCOMES AND THE GOLD STANDARD

§ 19:23	Overview
§ 19:24	The gold standard in child custody evaluations
§ 19:25	Taking the report to court

§ 19:26 Sample questions regarding of the witness's qualifications and voir dire

### IV. CHILD CUSTODY EVALUATIONS: THE GOOD

§ 19:27	Overview
§ 19:28	Favorable outcome—Very good report—Sample
	direct examination questions
§ 19:29	Unfavorable outcome—Very good report
§ 19:30	Sample destructive cross-examination questions
§ 19:31	Sample constructive cross-examination questions

### V. CHILD CUSTODY EVALUATIONS: THE AVERAGE REPORT

§ 19:32	Overview
§ 19:33	Sample voir dire
§ 19:34	Favorable outcome and average evaluation and report
§ 19:35	Sample direct examination
§ 19:36	Unfavorable outcome and average evaluation and report
§ 19:37	Sample cross examination

### VI. CHILD CUSTODY EVALUATIONS: THE UGLY

§ 19:38	Overview
§ 19:39	Favorable outcome and highly deficient evaluation and report—Sample direct/
	constructive cross examination
§ 19:40	Unfavorable outcome and highly deficient evaluation and report

§ 19:41	Sample destructive cross examination
§ 19:42	Concluding comments about ugly evaluations
§ 19:43	Concluding comments about this chapter

#### Volume 3

# CHAPTER 20. PROFESSIONAL STANDARDS FOR CLINICAL PSYCHIATRY & PSYCHOLOGY

#### I. OVERVIEW

§ 20:1	Introduction
§ 20:2	Ethical principles for psychologists and
	psychiatrists
§ 20:3	Ethics versus legality
§ 20:4	Practice guidelines for mental health
	professionals

### II. PROFESSIONAL STANDARDS REGARDING SPECIFIC TOPICS

$\S 20:5$	Informed consent
§ 20:6	Assessment in general
§ 20:7	Assessment of suicide risk
§ 20:8	Assessment of risk for aggressive behaviors
§ 20:9	Assessment of cultural factors
§ 20:10	Assessment of medical health
§ 20:11	Documentation
§ 20:12	Establishing an effective treatment plan
§ 20:13	Establishing an effective therapeutic
	relationship

### III. PROFESSIONAL STANDARDS REGARDING PARTICULAR INTERVENTIONS

§ 20:14	Therapy involving multiple individuals
$\S~20:15$	Blaming family members
§ 20:16	Turning the patient into a victim (and the
	professional into a savior)
$\S~20:17$	Dwelling on maladjustments versus focusing on
	strengths

lxxviii

§ 20:24

§ 20:18 Terminating treatment

#### IV. PROBLEMATIC INTERVENTIONS

- § 20:19 Recovered-memory therapy
  § 20:20 Critical Incident Stress Debriefing
  § 20:21 Scared Straight interventions
  § 20:22 Facilitated communication
  § 20:23 Attachment therapies
- V. THE GOOD: PROFESSIONAL STANDARDS MET

Dissociative identity disorder-oriented therapy

§ 20:25 Case examples

### VI. THE BAD: PROFESSIONAL STANDARDS NOT MET

§ 20:26 Case examples

### VII. THE UGLY: PROFESSIONAL STANDARDS IGNORED

§ 20:27 Case examples

#### CHAPTER 21. CHILDREN OF HIGH-CONFLICT FAMILIES

§ 21:1	Introduction
§ 21:2	The landscape of family conflict
§ 21:3	Intimate partner distress
§ 21:4	Intimate partner violence
$\S~21:5$	Loyalty conflicts
§ 21:6	Parental alienation
§ 21:7	Qualitative research regarding parental alienation
§ 21:8	Quantitative research regarding parental alienation
§ 21:9	Controversies regarding parental alienation
$\S 21:10$	Diagnosing parental alienation
§ 21:11	Interventions for parental alienation
$\S 21:12$	Parental alienation as child psychological abuse
§ 21:13	Prevalence of parental alienation

#### I. THE GOOD: WHEN HIGH-CONFLICT FAMILIES AND PARENTAL ALIENATION ARE PROPERLY HANDLED IN THE COURTS

§ 21:14 Case examples

### II. THE BAD: WHEN PARENTAL ALIENATION IS MISHANDLED IN THE COURTS

§ 21:15 Case examples

### III. THE UGLY: WHEN HIGH-CONFLICT CASES TURN DEADLY

§ 21:16 Case examples

#### CHAPTER 22. FORENSIC ASSESSMENTS IN DELINQUENCY CASES

#### I. OVERVIEW

8 22.	1 T	1	1	rtion
0 77.	1 11	ntro	$\alpha m$	ารากท

- § 22:2 Who are forensic evaluators?
- § 22:3 Brief history of juvenile courts
- § 22:4 Recent trends in the juvenile justice system
- § 22:5 Landmark cases
- § 22:6 Mental health diagnoses in juvenile justice system
- § 22:7 Custodial obligation
- § 22:8 Due process obligation
- § 22:9 Public safety obligation

## II. MENTAL HEALTH SCREENING AND ASSESSMENT FOR YOUTH IN THE CORRECTION SYSTEM

- § 22:10 Introduction
- § 22:11 Social and developmental history
- § 22:12 General psychiatric assessment—Introduction
- § 22:13 General psychiatric assessment—Specific assessment tools
- § 22:14 Violence risk assessment—Introduction
- § 22:15 Violence risk assessment—Specific assessment tools

lxxx

§ 22:16	Special education
$\S 22:17$	Trauma and child maltreatment—Introduction
§ 22:18	Trauma and child maltreatment—Specific
	assessment tools
$\S 22:19$	Substance use assessment—Introduction
§ 22:20	Substance abuse—Specific assessment tools

### III. JUVENILE COMPETENCY TO STAND TRIAL

§ 22:21	Description and history
§ 22:22	Correlates of competency to stand trial in
	juveniles
§ 22:23	Competency restoration
§ 22:24	Measurement of juvenile competency to stand
	trial—Introduction
§ 22:25	Measurement of juvenile competency to stand
	trial—Specific assessment tools

#### IV. JUVENILE TRANSFERS TO ADULT COURT

§ 22:26	Description and history
•	2
$\S 22:27$	Forensic assessments for juvenile
	transfers—Introduction
§ 22:28	Forensic assessments for juvenile transfers—
	Amenability to treatment
§ 22:29	Forensic assessments for juvenile transfers—
	Risk of violent behavior/dangerousness
§ 22:30	Forensic assessments for juvenile transfers—
-	Specific assessment tools

### CHAPTER 23. CHILD SEXUAL ABUSE INTERVIEWS

- § 23:1 Introduction
- § 23:2 Prevalence of child sexual abuse

### I. HISTORY OF CHILD SEXUAL ABUSE INTERVIEWING

§ 23:3	Overview
$\S 23:4$	The Jones-McQuiston guidelines
§ 23:5	American Professional Society on the Abuse of
	Children (APSAC) 1990 guidelines
§ 23:6	Memorandum of Good Practice (United
	Kingdom)

§ 23:7	National Center on Child Abuse and Neglect (NCCAN)
§ 23:8	Step-Wise interview protocol
§ 23:9	American Professional Society on the Abuse of Children (APSAC) 1997 practice guidelines for the psychosocial evaluation of suspected sexual abuse in children
§ 23:10	CornerHouse forensic interviewing protocol: RATAC / Gundersen NCPTC ChildFirst forensic interview protocol
§ 23:11	National Institute of Child Health and Human Development (NICHD) investigative interviewing protocol
§ 23:12	U.K. Ministry of Justice interviewing guidelines
§ 23:13	American Professional Society on the Abuse of Children (APSAC) 2012 practice guidelines: Forensic interviewing in cases of suspected child abuse
§ 23:14	NICHD revised Investigative Interview Protocol: Version 2018
§ 23:15	The Cognitive Interview

### II. TREATMENT OF CHILD SEXUAL ABUSE UNDER THE LAW

y testimony

#### III. THE GOOD

§ 23:20	Overview
§ 23:21	Blind interviewing
§ 23:22	Rapport building
§ 23:23	Establish appropriate interview rules
§ 23:24	Hypothesis testing
§ 23:25	Ask open-ended questions
§ 23:26	Videotaping
§ 23:27	Understand the dangers of using unsupported
	techniques

#### IV. THE BAD

§ 23:28 Overview

lxxxii

§ 23:29	Junk science theories and questionable techniques
§ 23:30	The Sgroi method of validating child sexual abuse
§ 23:31	Validation testimony from the Child Sexual Abuse Syndrome (CSAS)
§ 23:32	Behavioral indicators and base rates
§ 23:33	Interviewer bias
§ 23:34	Suggestibility & suggestive interviewing techniques—Overview
§ 23:35	Suggestibility & suggestive interviewing techniques—Play and trauma therapies
§ 23:36	Suggestibility & suggestive interviewing techniques—Leading questions
§ 23:37	Suggestibility & suggestive interviewing techniques—Introducing information, misinformation or modifications
§ 23:38	Suggestibility & suggestive interviewing techniques—Specific (focused) questions
§ 23:39	Suggestibility & suggestive interviewing techniques—Repeated questions
§ 23:40	Suggestibility & suggestive interviewing techniques—Multiple interviews
§ 23:41	Suggestibility & suggestive interviewing techniques—Multiple interviews—Extended forensic evaluation
§ 23:42	Suggestibility & suggestive interviewing techniques—Multiple interviews—Parental questioning
§ 23:43	Suggestibility & suggestive interviewing techniques—Reinforcement: Punishments and rewards
§ 23:44	Suggestibility & suggestive interviewing techniques—Inviting speculation
§ 23:45	Suggestibility & suggestive interviewing techniques—Peer contamination
§ 23:46	Suggestibility & suggestive interviewing techniques—Treating denials and recantations as dynamics of abuse disclosure
§ 23:47	Suggestibility & suggestive interviewing techniques—Using nonverbal props
§ 23:48	Suggestibility & suggestive interviewing techniques—Using nonverbal props—Body diagrams
§ 23:49	Suggestibility & suggestive interviewing

	techniques—Using nonverbal props— Anatomically detailed dolls & puppets
§ 23:50	Suggestibility & suggestive interviewing
	techniques—Stereotype induction
§ 23:51	The Child Sexual Abuse Accommodation
	Syndrome (CSAAS)
§ 23:52	Problematic forensic interview training

#### V. THE UGLY

§ 23:53 Case examples

# CHAPTER 24. THE FORENSIC ASSESSMENT OF HARASSMENT AND STALKING

#### I. LEGAL AND FORENSIC ISSUES

$\S 24:1$	Introduction
§ 24:2	Stalking and harassment cases in the #MeToo era
§ 24:3	The laws of stalking and harassment
§ 24:4	Forensic assessment of stalking and harassment

## II. STALKING AND HARASSMENT: THE GOOD, THE BAD, AND THE UGLY OF FORENSIC EVIDENCE

§ 24:5	Good forensic assessments in stalking and
	harassment cases
§ 24:6	"Bad" forensic assessments in stalking and
	harassment cases
§ 24:7	Controversies in the forensic assessment of
	stalking and harassment

#### CHAPTER 25. SYNDROME EVIDENCE: CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME AND RAPE TRAUMA SYNDROME

§ 25:1	Introduction
§ 25:2	Child Sexual Abuse Accommodation Syndrome
	(CSAAS)

§ 25:3 Child Abuse Accommodation Syndrome (CSAAS)—Cross examination questions

lxxxiv

- § 25:4 Rape Trauma Syndrome (RTS)
  § 25:5 Admissibility of CSAAS and RTS
  § 25:6 What this subject matter looks like when handled improperly—Case examples
- § 25:7 Conclusion

### CHAPTER 26. SYNDROME EVIDENCE: MUNCHAUSEN BY PROXY

- § 26:1 Introduction
- § 26:2 Legal issues
- § 26:3 The good
- § 26:4 Diagnosis & prevalence
- § 26:5 Assessment
- § 26:6 Differential diagnosis
- § 26:7 Treatment options
- § 26:8 Expert qualifications
- § 26:9 The Bad—Common expert deficits
- § 26:10 The ugly—Inaccurate conclusions and catastrophic outcomes

#### CHAPTER 27. RISK AND DANGEROUSNESS IN ADULTS: VIOLENCE RISK ASSESSMENT

- § 27:1 Introduction
- § 27:2 Reciprocal relationship of case law and violence risk assessment
- § 27:3 Principles for conducting and reporting violence risk assessments
- § 27:4 Preparing for *Daubert*, etc., challenges
- § 27:5 Cross examination techniques specific to risk assessment testimony
- § 27:6 Concluding remarks

#### CHAPTER 28. FORENSIC NEUROPSYCHOLOGICAL AND NEUROLOGICAL EVALUATION OF VIOLENCE

§ 28:1 Introduction

#### I. SCIENTIFIC ISSUES

§ 28:2 A word on violence

#### LITIGATOR'S HANDBOOK

§ 28:3	Neurodevelopmental criminality & neuropsychology and its link with violence
§ 28:4	Neurological correlates to violence
§ 28:5	Neurological correlates to violence
§ 28:6	The neuropsychology of sex offenders
§ 28:7	Psychopathy and the brain
§ 28:8	Psychopathy and neuropsychological testing
§ 28:9	Developmental trauma, PTSD, the brain and
	violence
§ 28:10	Traumatic brain injury and violence
§ 28:11	Substance abuse, the brain, and violence
§ 28:12	Neuropathology and psychopathology, the brain, and violence
§ 28:13	Neurodevelopmental disorders
§ 28:14	Attention-deficit hyperactivity disorder
§ 28:15	Language disorders
§ 28:16	Conduct disorder
§ 28:17	Autism spectrum disorder
II. LI	EGAL ISSUES
§ 28:18	Forensic neuropsychology and neuroimaging in the courts—The application of neuroscience to forensic legal issues
§ 28:19	The application of forensic neuroscience to juvenile transfer/waiver and sentencing in juvenile murder cases
§ 28:20	Applying forensic neuropsychological assessment in juvenile waiver cases
§ 28:21	Death penalty cases—Mitigation and neuroscience evidence
§ 28:22	Death penalty cases—Why mitigation?
§ 28:23	Death penalty cases—Why mitigation?  Death penalty cases—Understanding the capital defendant
§ 28:24	Death penalty cases—Statutory mitigating factors
§ 28:25	Neuropsychological correlates in violent and homicidal offenders
§ 28:26	Neuropsychology and neuroimaging applications in death penalty cases
§ 28:27	Further commentary on the application of neuroscience to capital proceedings
§ 28:28	Neuroscience and not guilty by reason of insanity/diminished capacity

lxxxvi

§ 28:29	Applying forensic neuroscience to insanity & diminished capacity
§ 28:30	Neuroscience and competency to stand trial and waive <i>Miranda</i> rights
§ 28:31	Concluding remarks

#### CHAPTER 29. SEX OFFENDER EVALUATION AND RISK ASSESSMENT

§ 29:1	Introduction
§ 29:2	The rise of sex offender legislation and the need
	for improved sex offender evaluation,
	treatment, and risk management
§ 29:3	Forensic risk assessment of sex offenders
§ 29:4	Forensic psychiatric diagnosis
§ 29:5	Sex offender typologies
§ 29:6	Rapists
§ 29:7	Hebephilia
§ 29:8	Child molesters and pedophilic disorder
§ 29:9	Crossover sexual offenders
§ 29:10	Sex offenders with multiple paraphilias
§ 29:11	Online child pornography and solicitation sex
	offenders
§ 29:12	Predictors of sexual recidivism
§ 29:13	Actuarial risk assessment
§ 29:14	Base rate risk assessment
§ 29:15	Dynamic risk factor assessment
§ 29:16	Aging effects in sex offenders
§ 29:17	Risk management and treatment of sex
	offenders
§ 29:18	The neuroscience of sex offending
§ 29:19	The good, the bad, and the ugly—Sex offender
	evaluation and litigation
§ 29:20	—Case examples

Table of Laws and Rules

**Table of Cases** 

Index