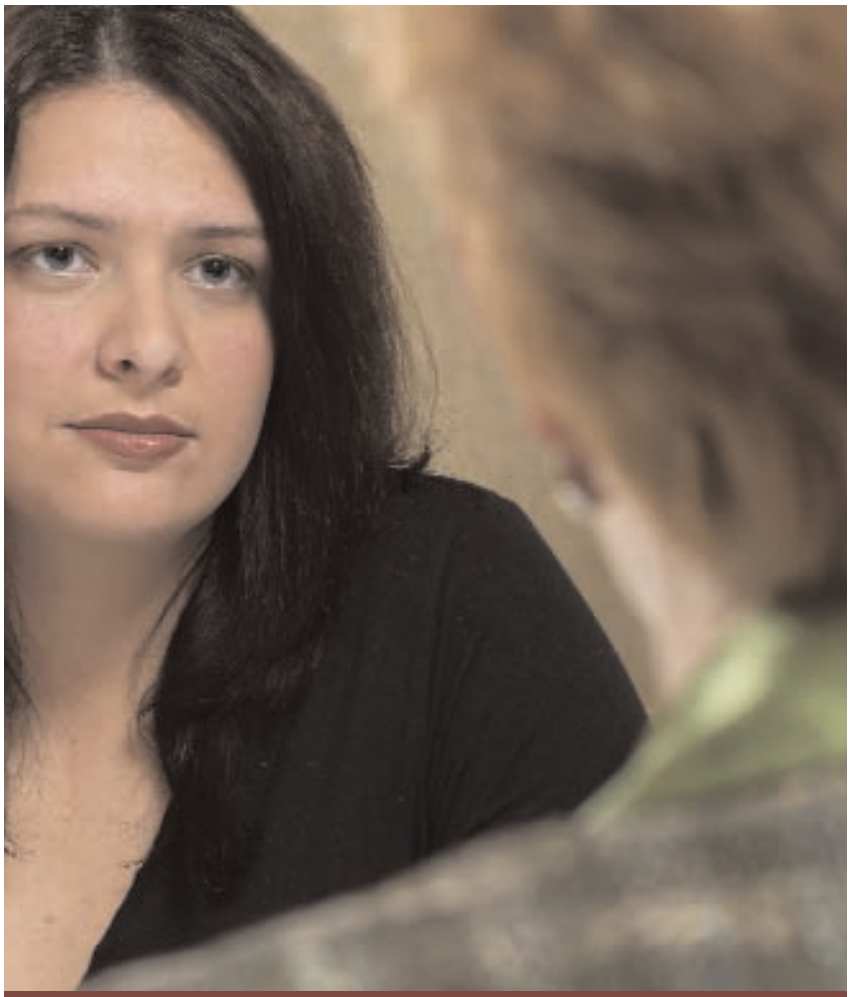

Posttraumatic Stress Disorder Within the Forensic Arena

by Charles A. Morgan, MD, MA; Seth Feuerstein, MD, JD; Frank Fortunati, MD, JD; Vladimir Coric, MD; Humberto Temporini, MD; and Steven Southwick, MD

In this piece, we discuss the diagnosis of posttraumatic stress disorder (PTSD) within the forensic context of civil and criminal litigation. Although most psychiatrists are familiar with PTSD and with making a diagnosis of PTSD in a clinical setting, many are unaware that their typical clinical approach, when used in the context of legal proceedings, can lead to problems.

The main source of difficulty lies in the clinician's failure to recognize that there are significant differences between clinical and forensic concerns. In the clinical setting, the primary concern is one of providing relief and care. The clinical doctor-patient relationship is a supportive one wherein the doctor generally assumes the patient is honest, forthcoming when providing the history of illness or symptoms, and interested in treatment.

By contrast, most clients who are evaluated for PTSD by forensic examiners are participating in the evaluation because it has been requested by an attorney or by the court. The primary goal of most people being evaluated for PTSD in this context is to persuade the examiner that they [the plaintiffs] have suffered serious psychological injury and, as a result, are deserving of compensation. In the case of criminal defendants, the primary goal is usually to convince the examiner that they are not culpable for their actions due to their PTSD [an insanity defense] or that they are, due to their condition of PTSD, eligible for a more lenient view in the eyes of the court [a less serious

sentence; this is often referred to as 'mitigation' or 'downward departure']. Thus, the relationship in this context is quite different: The person is not interviewed as a patient, and there is no assumption on the part of the physician that the interviewee is entirely honest or forthcoming when providing information. Further, the explicit purpose of the evaluation is not treatment; it is to establish whether the person does indeed suffer from PTSD, and if so, to describe for the court, the degree of impairment (past or present) that is caused by the condition.

So what do we do differently in a forensic evaluation?

ESTABLISH WHETHER OR NOT THERE ARE VERIFIABLE TRAUMATIC EVENTS

Current diagnostic criteria (DSM-IV-TR) require that in order for a person to meet criteria for a diagnosis of PTSD, he or she first must have been exposed to a traumatic event. This is referred to as Criterion A. Specifically, this means that a person must have been exposed to an event during which 1) there was a serious, imminent threat to his or her life, his or her physical integrity, or to that of others; and 2) he or she experienced a sense of fear, helplessness, or horror. If an event does not meet these criteria, a person is NOT evaluated for PTSD in relationship to the event. [NOTE: The large number of 'recovered memory' cases reported in the 1990s provided robust evidence that it is both unwise and dangerous for professionals to work 'backward' by using symptoms reported by the client as evidence for a traumatic event.]

NOT EVERYTHING BAD THAT HAPPENS IS A TRAUMA

Although it may seem obvious that there is an identifiable traumatic event to which the person was exposed, this is not always the case. Numerous events [such as loss of one's job or one's home or being diagnosed with a serious or incurable medical condition] can be highly distressing but do not meet criteria as traumatic events in that there was no imminent risk to a person's physical integrity or life. The only way to sort out this issue is by obtaining as much data as possible.

If you are asked to evaluate a civil PTSD claim, you should ask for as much documentation about the traumatic event as you can, such as accident reports, photographs, police accounts, and medical documents from that time. In addition, you should ask the plaintiff or the attorney for the names of individuals with whom you might be able to speak who may have witnessed the event or who interacted with the person shortly after the event. These sources of information can be very helpful when making a judgment about whether or not the event qualifies as a traumatic event.

In criminal PTSD cases, it can be more difficult to obtain data about reported traumatic events owing to the fact that the index trauma [i.e., the event that caused PTSD] often predates the criminal event by a number of years. Nevertheless we believe that a serious attempt to verify the existence of the traumatic event is warranted. If you are asked to assess a defendant who claims to suffer from a condition of combat-related PTSD, you and the defendant's attorney should make contact with the Department of Veterans Affairs in order to verify that the veteran was actually in combat. Similarly, if a defendant claims PTSD from sexual abuse or assault, an effort should be made to seek out objective evidence for the traumatic event. If none is available, it is wise to be explicit about this when rendering an expert opinion.

USE STRUCTURED INTERVIEWING TECHNIQUES

At present, the gold standard in PTSD assessment is the Clinician Assessed PTSD Scale (CAPS) (DSM-IV version). Indeed, a CAPS evaluation is currently the normative basis for diagnosis or treatment response in most scientific studies of PTSD. The CAPS is a semistructured interview that is extremely useful in documenting the intensity and frequency of PTSD symptoms. It is performed for each traumatic event in a person's history that meets Criterion A (DSM-IV) requirements. Some training on the instrument is required, but we believe most experts will find that the time required is worth the effort. The CAPS structures the interview so that the expert is able to obtain the greatest amount of detail about each of the symptom categories of PTSD. In addition it can be great help in making an assessment about the degree of severity and functional impairment caused by the illness. In our experience,

individuals who genuinely suffer from PTSD have little difficulty generating numerous examples of their symptoms whereas individuals who are feigning or exaggerating their symptoms provide a narrow range of stereotypical responses. Semistructured interviewing has been around for more than two decades. The CAPS, like the SCID, has proven to be reliable and valid. The use of highly rigorous assessment instruments in the forensic setting reduces the likelihood of false positive and false negative findings. This is, in part, due to the fact that the detailed information obtained during the CAPS interview can be compared with the information obtained from work records, school records, and interviews with people who know the examinee in various contexts.

In addition to the use of the CAPS, other semistructured assessments, such as the Structured Clinical Interview for DSM-IV [SCID]) can be very valuable when performing a forensic PTSD evaluation. It is extremely common for people with PTSD to suffer from additional psychiatric disorders (such as affective disorders, anxiety disorders, substance abuse, and alcohol-related disorders). The SCID can be extremely helpful in rendering an opinion that is based on data and not on clinical guesswork. Similarly, although many experts do not request standardized psychological testing, such as the MMPI-2, Millon, or IQ, it often can be very helpful to the expert who is performing a PTSD evaluation for the court. Such testing can be helpful to the expert when he or she is making judgments about the examinee's style of coping, degree of effort, or degree of impairment.

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TRAUMATIC MEMORIES: NOT INDELIBLE AND NOT RELIABLE

Many professionals have assumed that because people who suffer from PTSD experience intrusive thoughts, nightmares, or flashbacks about their traumatic events, that memory for trauma is relatively indelible and stable over time. Indeed, a large number of mental health professionals often believe that the 'gist' of one's memory is true, which results in the conclusion that what the patient or client remembers must in fact be true. Over the past 10 years, a number of studies have provided evidence that memories for traumatic events are not indelible, but subject to substantial change over time. Further, we now know that high levels of stress may disrupt human memory. The bottom line about memory is this: While the veracity of a memory for traumatic events may not matter within the clinical context, it may matter a great deal in the forensic context. At the present time, forensic experts do not have an objective test that would let us know which memories are likely to be accurate and which are not. We know, based on good science, that neither a person's level of confidence in his or her memory nor the level of detail he or she provides when reporting such memories are reliable indicators of truth or accuracy. Thus, at present we recommend mental health professionals and experts refrain from commenting on the 'accuracy' of memory and refrain from using memories as evidence for objective facts. Unless the reported memories can be paired with valid, corroborative, objective evidence, it is unwise to consider

traumatic memories as reliable or valid indicators of external events.

CAUSALITY AND RESPONSIBILITY

In civil cases, it is often the case that plaintiffs who are claiming to suffer PTSD from the event before the court have also suffered from previous traumatic events. When this occurs, the expert is faced with the challenge of separating out the degree of impairment caused by previous traumas from that caused by the event before the court. When performing a psychiatric evaluation, it is vital that one assess a traumatic event's history prior to performing the CAPS. The CAPS is then conducted for each event that meets the Criterion A definition for a traumatic event. The CAPS scoring system permits a rating of PTSD severity for each traumatic event. Coupled with the information obtained from interviews with people who knew the plaintiff prior to and after the traumatic event before the court, this data can assist the expert in rendering an opinion of severity to the court.

In criminal cases, a defendant may put forward a PTSD-related Not Guilty by Reason of Insanity (NGRI) defense. In putting forward this defense, the defendant acknowledges having committed the act, but is not criminally responsible due to his or her condition of PTSD. The symptom of PTSD that is most commonly invoked to explain why a person may lack responsibility for his or her actions is the "flashback." Flashbacks are dissociative states brought on by a high degree of arousal or alarm during which a person may be completely or partially unaware of his or her immediate circumstances—a distortion of perception and thinking that may rob that person of the ability to accurately appreciate the nature of his or her actions with regard to the law. A trier of fact is more likely to be persuaded by an expert's psychiatric opinion if the expert can establish that the defendant has a well documented history (via medical records or third party observations) of flashbacks and the circumstances of the alleged crime are similar to the contexts in which such symptoms most often occur. The expert may inform the court if it is within a reasonable degree of medical certainty that the defendant suffered from PTSD at the time of the alleged crime. The expert may also inform the court that PTSD symptoms, such as flashbacks, may impair a person's capacity to accurately assess his or her situation and circumstances. However—and it is important to emphasize this—it is the role of the judge or the jury (not the psychiatric expert) to decide whether, at the time of the alleged crime, but for the presence of a PTSD-related flashback, the defendant would not have committed the crime.

The most common reason for which a PTSD evaluation may be requested in a criminal case is for mitigation. When deciding on the sentence a person receives, judges may often take into consideration mitigating factors, such as the presence of psychiatric illness. Judges want to know, among other things, whether the person suffers from a psychiatric condition, the severity of the condition, the degree of impairment caused by the condition, and whether or not treatment is necessary for the condition. By providing this type of psychiatric information to the court, the expert may have a significant impact on the sentence a person will receive.

IN CLOSING

In this article we only have addressed some of the issues related to assessing and diagnosing PTSD in the forensic context of civil and criminal proceedings. In future articles, we hope to address non-PTSD related psychiatric problems that may arise in victims of trauma.

All authors are from Yale University School of Medicine, New Haven, Connecticut.

ADDRESS CORRESPONDENCE TO:
New Haven Forensic Consultants LLC, 1440 Whalley Ave., #244
New Haven, CT 06515