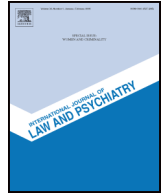




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PTSD in Court I: Introducing PTSD for Court

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ABSTRACT

The first part of the series of three articles on posttraumatic stress disorder (PTSD) in Court to appear in the journal reviews the history of the construct of PTSD and its presentation in the DSM-5 (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition; American Psychiatric Association, 2013) and the ICD-11 (International Classification of Diseases, 11th Edition; World Health Organization, 2018). There are 20 symptoms of PTSD in the DSM-5. PTSD symptoms are arranged into a four-cluster model, which has received partial support in the literature. Other four-factor models have been found that fit the data even better than that of the DSM-5. There is a five-factor dysphoria model and two six-factor models that have been found to fit better the DSM-5 PTSD symptoms. Finally, research is providing support for a hybrid seven-factor model. An eighth factor on dissociation seems applicable to the minority of people who express the dissociative subtype. At the epidemiological level, individuals can expect trauma exposure to take place about 70% over one's lifetime. Also, traumatic exposure leads to traumatic reactions in about 10% of cases, with PTSD being a primary diagnosis for trauma. Once initiated, PTSD becomes prolonged in about 10% of cases. Polytrauma and comorbidities complicate these prevalence statistics. Moreover, the possibility of malingered PTSD presents confounds. However, the estimate for malingered PTSD varies extensively, from 1 to 50%, so that the estimate is too imprecise for use in court without further research. This first article in the series of three articles appearing in the journal on PTSD in Court concludes with discussion of complications related to comorbidities and heterogeneities, in particular. For example, PTSD and its comorbidities can be expressed in over one quintillion ways. This complexity in its current structure in the DSM-5 speaks to the individual differences involved in its expression.

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1. Overall summary of the series of three articles on PTSD in Court

This series of three articles in the journal on Posttraumatic Stress Disorder (PTSD) in Court addresses the current literature related to the validity of PTSD in the DSM-5 (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, *American Psychiatric Association, 2013*), as well as the forensic challenges that PTSD presents. The three articles elaborate the following.

- (a) The first article in the series of three in the journal, the present one, offers an introduction related to PTSD, and emphasizes the DSM-5 PTSD symptoms and dimensions, in particular. The DSM has been criticized for its reliability and validity issues. Research on PTSD is burgeoning and is redefining our understanding of how it is expressed and how its symptoms relate to each other. This research calls into question the validity of using without modification the current version of the DSM for court purposes.
- (b) The second article of the present series of three articles on PTSD in Court (*Young, 2017a*) consists of a review of PTSD's extensive neurobiological, neurophysiological, and genetic underpinnings. Endophenotypic pathways from genes to brain to behavior are

being suggested for PTSD, as well as biomarkers that index it. This section includes discussion of the models and causes of PTSD. It concludes that a biopsychosocial, multicausal model best encompasses the multifactorial causality of PTSD. In this regard, a novel model is described that is based partly on contemporary connectivity science.

- (c) The third of the three articles in the journal on PTSD in Court addresses the forensic and court context for PTSD (*Young, 2017b*). It focuses on malingering, how to assess PTSD with psychological tests, and which tests help in attributing malingering, if it is inferred as present. The last article in the series of three articles on PTSD concludes with legal considerations, including on the material contributions test, adversarial divide, litigation distress, biases, and admissibility of evidence to court.

To elaborate further, PTSD is part of the disability epidemic in court and related venues. In this regard, *Bass and Halligan (2014)* noted that malingering of PTSD is a "huge" issue (*Morel, 2010*) and that toward 25% of evaluatees fail a series of measures examining for malingering and related biases (*Merten, Thies, Schneider, & Stevens, 2009*). However, *Vermetten, Baker, Jetly, and McFarlane (2016)* noted that PTSD is under-diagnosed rather than being over-diagnosed. In support of this

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contention, they referred to research in clinical settings (e.g., [Liebschutz et al., 2007](#)). To be fair, the diagnostic epidemic of PTSD refers to more forensic than clinical contexts, such as in evaluations for disability claims, whether military, in tort, in worker compensation, in private insurance, and so on.

Although the prevalence of malingering appears seemingly high, progress is being made both in its assessment/testing and diagnosis. For example, the addition of reckless/destructive behavior to the DSM-5 symptom list opens a Pandora's Box of improper forensic use. Also, the cut scores in use on relevant tests need continuing research on valid application to the psychological injury (e.g., tort, worker compensation) context. The article concludes that, despite the controversies associated with PTSD, it is a valid clinical phenomenon that the research is increasingly specifying for its symptoms and clusters. Its suggested biological basis is standing up to replication to the point that PTSD in valid cases should be considered a biopsychosocial disorder and not purely a mental one. However, caution suggests that there are as yet no definitive biomarkers of PTSD for court purposes; they are not yet sufficiently differentiated for use in individual cases going to court. Despite what some might contend in their narratives about PTSD, it is not a mental disorder that has no validity and, if it is diagnosed, it is not often reflective of malingering. Unlike the opposite point of view, it is valid, it can be validly diagnosed, and malingering does not confound it to any great degree. This opposition in views on PTSD illustrates that there is much work to do forensically to improve assessment and diagnostic procedures, including for malingering attribution and related negative impression management or feigning. Overall, the tension in the field about the validity of PTSD in court, and the different approaches to it as manifested in defense and plaintiff narratives about it, can only be mitigated, at least to a degree, by a constant, comprehensive (a) research program on its expression, origins, and treatment, and (b) up-to-date literature review on this research and the conceptualizations about PTSD. In brief in this regard, to conclude, the series of three articles on PTSD in Court in this journal discusses PTSD especially in terms of its DSM-5 criteria, dimensional or cluster structure, neurobiology and genetics, causality, assessment/testing, and malingering detection, and legal aspects (the present article, [Young, 2017a, 2017b](#)). It presents new models of PTSD both in each of its symptom expression and organization, causality, and treatment.

2. PTSD in court

Posttraumatic stress disorder (PTSD) is one of the major psychological injuries, which collectively refer to psychological conditions that might arise after an event at claim, and then lead to legal or related action in court and other venues (such as for tort, in worker compensation, at the VA, Veteran's Administration, for military veterans, and in cases involving other disability actions). Aside from PTSD, psychological injuries include other actionable conditions, especially chronic pain and mild traumatic brain injury (mTBI). Along with depression and anxiety-related conditions, pain and cognitive effects of mTBI often are comorbid with PTSD, and so complicate its presentation, assessment, diagnosis, and treatment. Cases of polytrauma typically are harder to treat than conditions with one disorder being present and having no comorbidities. Other complications in dealing with PTSD include the presence of pre-existing stressors or psychopathology, such as early childhood sexual abuse and a history of traumatization, which facilitate that an index event precipitates the PTSD at issue, which otherwise would not have occurred without pre-existing complications. Pre-existing stressors and psychopathology that lead to an index PTSD also could result in the resultant condition lasting more than might be expected. At the other extreme, another type of complication concerns issues such as symptom exaggeration or overreporting, negative impression management or response bias, and feigning and outright malingering. Evidence of outright malingering should not present challenges to the forensic PTSD evaluator, but what of gray zone cases, the possibility of

less concerning attribution of a "cry for help" or relating any exaggeration to psychopathology, and so on.

The forensic evaluator in disability and related assessments deals with the validity of psychological injuries and their claimed effects, including for cases involving presentation of symptoms consistent with PTSD. The evaluator needs to proceed cautiously because of the many possible confounds associated with PTSD. Consider that the evaluatee might be coached and present normatively, aside from the opposite extreme of behaving in the assessment with poor or suboptimal effort, gross exaggerations, feigning and dissimulation, in general, or any type of problematic presentation and performance or negative response bias, including that of outright malingering. The third article in the series of three in this journal on PTSD in Court ([Young, 2017b](#)) describes the scientific evidence for assessing evaluatees who conduct themselves in this latter manner in ways that are both effective and fair. At the same time, the present work does not advocate for use of biomarkers of PTSD in court, given that the type of research on these putative PTSD indices demonstrates normative trends, at best, and the research is not yet sufficiently developed for use in determining exactly whether or not specific individuals have PTSD, and differentially so relative to those who do not express this disorder ([Young, 2017a](#)).

The series of three articles on PTSD in Court published in the journal examines these multiple themes on the topic of PTSD in court by describing in depth the most recent literature (2015–start of second half of 2016) and then providing commentary on it. To the degree possible, it eschews examining prior literature for the most part and assiduously avoids building on prior conceptions and models, including predominant court models on what PTSD is about, while selecting only the research in support of one already existing conception/model or the other.

The literature review that is undertaken speaks to the primary goal of the series of three articles on PTSD in Court found in the present journal—to ascertain the reliability, validity, and relevance of PTSD in court, the difficulties presented in its assessment (including those related to possible feigning, such as malingering), and discussion of outstanding issues and needed research directions toward improving the standing of PTSD in court. Toward these ends, the literature review is comprehensive although inevitably selective given the massive amount of research on PTSD. The review presents the research data as if it were the reliable data to be considered in a case, letting the chips fall as they may. It tries to avoid preconceived narratives, doing this by indicating clearly when the commentary sections begin after the sections describing the literature, so that there is no confusion between data presented in the research and their interpretation by myself and, moreover, this format permits that all the evidence used in these regards can be reviewed by the reader. This careful approach to gathering data and interpreting them constitutes the same elements required by psychologists in their cases dealing with PTSD that might end up in court or related venues. In this sense, in this area of practice (and research), science should be the arbiter of what constitutes valid evidence rather than anything related to the adversarial (e.g., plaintiff/defense) divide or other such possible bias. The work concludes by examining possible biases, the role of litigation science, the evidence for plaintiff and defense narratives about PTSD, and so on, before calling for more focused research on the issues facing the field.

In order to achieve its goals as enunciated, the series of three articles on PTSD in Court that constitutes the present work tackles, in turn, each of the following topics and questions related to PTSD [this list is more specific than simply stating there are three general parts to the present work]: (a) history (does it show that PTSD is a natural kind or is constructed?); (b) diagnostic manuals (generally, do they value clinical utility or research?); (c) traumatic exposure (is it inevitable, does it always cause PTSD?); (d) prevalence (is PTSD as widespread as the disability epidemic indicates, or manipulated by claimants and attorneys to their monetary advantage?); (e) DSM-5 symptoms (why do we need 20 of them; are they easy to manipulate for court

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