

## PSYCHOPATHS: WHAT ATTORNEYS AND JUDGES SHOULD KNOW

by Gary Rick, Ph.D.

The word "psychopath" conjures images of serial killers, sexual predators, and other violent criminals. While people in these categories usually are psychopaths, psychopathic individuals frequently manipulate and victimize others in less obvious ways. These "partial psychopaths" display only some of the traits seen in the full syndrome. Partial psychopaths may appear quite normal and their dangerousness may be missed. Psychopaths with the full syndrome are prevalent in the criminal courts. Partial psychopaths frequently find themselves in civil and family law disputes.

The psychopathic personality disorder represents a constellation of traits that is stable over the lifespan. These traits include the lack of emotional connection to others, superficial charm, grandiosity, lack of remorse or guilt, and a propensity to harm others. It is estimated that the proportion of psychopaths in maximum-security prisons may be as high as 70%; in the general population, about 2 % of men and 1 1/2 % of women are psychopathic.

Psychopathic individuals may be more dangerous to attorneys and judges in areas other than criminal law. A psychopath convicted of a crime goes to prison, and a psychopath who is found not guilty is unlikely to hold any animus toward the judge or either attorney. On the other hand, psychopaths in noncriminal legal conflicts remain in society, in a position to act aggressively toward anyone they perceive with enmity. Their aggression may take the form of frivolous complaints to the bar association, nonpayment of fees, stalking, and other actions that fall short of physical violence. Violent actions may occur if violence is part of the past repertoire of the individual.

The existence of psychopaths has been known for centuries. References

can be found in the Bible and the writings of the ancient Greeks. The word "psychopath" was popularized and defined in *The Mask of Sanity* by Hervey Cleckley in 1941. Based on his experience working in psychiatric hospitals, Cleckley described 16 traits that he observed in psychopathic individuals.

Cleckley's work was recently refined by Dr. Robert Hare, a psychologist at the University of British Columbia. Hare developed a structured interview called the Psychopathy Checklist (PCL-R) now considered the gold standard in assessment of psychopaths. Other psychological instruments such as the MMPI-2 do not provide stable measures of psychopathy. Attorneys should be wary of any psychologist who bases a finding of psychopathy primarily based on an elevated Pd (psychopathic deviate) scale on the MMPI-2.

It now appears that psychopathy may be something of a phenotype or biological subgroup similar to schizophrenia. Linguistic studies suggest that emotion is like a "second language" to psychopaths. One recent study found that psychopaths and control subjects had different patterns of cerebral blood flow when given a language task involving emotional and non-emotional words. Adoption research suggests that heredity is a factor in antisocial behavior. Other studies have shown a variety of neurochemical differences between psychopaths and controls. Psychopaths do not have a "startle reflex" and do not develop fear of consequences.

The environment also plays a role in the development of a psychopathic personality disorder. Anthropological research has centered on social groups with very high and very low rates of psychopathy. Social groups known to be altruistic (non-psycho-

pathic) typically have nuclear families, egalitarian male-female relationships, a low number of children per family, high-intensity parenting, and cooperative food production systems. As these factors reverse, psychopathy increases.

Attorneys and judges should be aware of political and diagnostic issues related to psychopathy. Most are familiar with the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM-IV). This manual is revised every few years based on an electoral, rather than scientific, process. The closest diagnosis to psychopathy in the DSM is Anti-social Personality Disorder (ASD).

The factors in ASD include violent and criminal behaviors. No reference to the internal psyche of the individual is made. That is because it is easier to measure overt behavior. The authors of the DSM obtain higher inter-rater reliability if they base the diagnosis exclusively on observable behaviors rather than on less reliable measures of inner psychological function. However, many psychopathic individuals will not meet the criteria for ASD. Therefore, by using only the DSM, important information about an individual can be lost or ignored.

The prognosis for psychopaths and partial psychopaths is bleak. They do not learn from experience and they have limited motivation to change. Hare has found two primary attributes that are measured in the PCL-R. One is "chronic antisocial behavior." This may include unscrupulous activities as seen in ASD. The other factor can be called "aggressive narcissism," and involves a sense of specialness and the demand that others behave in accordance with this view. It is aggressive narcissism that is likely to bring psychopathic individuals to non-criminal legal conflicts.

One problem faced by attorneys, judges, and mental health professionals is that psychopathy frequently goes undiagnosed because psychopaths specialize in presenting a false image to others. The psychopath can be charming, well organized, and may present as an ideal client. This may change dramatically, however, if the psychopathic client does not "win" the case in the manner they feel is appropriate. A second reason for missing the psychopathic diagnosis is that mental health practitioners are often not trained or experienced in dealing with psychopathy. Psychopaths are very unlikely to seek treatment on their own. If they were to seek treatment, they would provide a compelling presentation in order to get what they want from the therapist.

To manage risks associated in representing psychopathic clients\*, attorneys should ask for a history of past legal, marital, and substance problems. The attorney should prepare the client for a course of action to be followed if the case does not go well. Avoid negative comments about opposing counsel, the court or any other involved party. While most attorneys are very conservative in their predictions about the outcome of any case, it is very important to be pessimistic with a psychopathic client.

How will you know if your client is psychopathic, given their ability to hide behind the mask of sanity? It is important to be sensitive to the possibility that your charming client may be psychopathic. To treat clients

as if they are psychopathic when they are not does no harm. To treat your clients as if they are normal, when they are psychopathic, can be very harmful to the attorney or others involved in the case. It may be helpful to seek a psychological consultation, particularly if violence is a possibility.

\*A brief checklist designed for attorneys to help in assessing and managing possible psychopathic clients can be obtained by contacting Dr. Rick at 805-658-9232.

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