Ethics and the Criminal Profiler

We have to condemn publicly the very idea that some people have the right to repress others. In keeping silent about evil, in burying it so deep within us that no sign of it appears on the surface, we are implanting it, and it will rise up a thousand-fold in the future. To stand up for truth is nothing. For truth you have to sit in jail.

—Aleksandr Solzhenitsyn, *The Gulag Archipelago*

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The term ethics, as we use it, refers to rules or standards that have been established to govern the conduct of members of a profession. The problem here is that only a handful of criminal profilers have begun to professionalize. Most criminal profilers operate outside of a specific or written code of professional ethics. Consequently, one could make an effective argument for the position that many criminal profilers are still allowed the luxury of giving expert opinions without having to worry about being held responsible for them.

The author is alarmed by the continual examples of reckless, unethical behavior in the criminal profiling community. Many do not seem to be in touch with, or concerned by, the real-world consequences of their conduct. In fact, many seem dangerously preoccupied with recognition and status (and that has come to mean media attention).

Responsibility is the key. Keep in mind that a profiling method may be incompetent and a profiling result may be incorrect. But only the behavior of the criminal profiler can be referred to as unethical (e.g., a profiler who continues to use a method that he or she knows to be inaccurate). If criminal profilers perceive no duty to actually assist an investigation and see themselves only as academics with a higher scientific or academic goal in mind, then this absolves them of any ethical responsibility to a case. That means having no moral obligation to the validity of their opinions.

How dare we.

This chapter discusses the various types of unethical conduct and fraud that occur in the profiling community and offers readers an opportunity to learn from specific case examples. Additionally, a code of ethical conduct is provided as a preventative educational measure.

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1 On March 16, 1999, the author and five other professionals from the investigative, behavioral, and forensic disciplines formed the Academy of Behavioral Profiling (ABP). This was the first nonpartisan, independent professional organization dedicated to criminal profiling. As ABP president, Michael McGrath, M.D., stated: "To begin the task of professionalization, individuals of varied but specific backgrounds have joined together to found this concerted, multidisciplinary effort. As practitioners in our own disciplines, we struggle with what has been done in the past, what we are doing now, how we are doing it, and why." The ABP Web site is located at www.profiling.org.
WHEN PROFILING HARMs

Dr. Paul Wilson, a professor and criminologist at Bond University in the Gold Coast, Australia, articulated the issue of ethics as it relates to criminal profiling very well. According to Kocsis et al. (1998, pp. 8–9),

There should be an onus on experts to point to the limitations of profiling. ...  

[Profiling is no more unethical than any other investigative technique. It is how profiling (or any other technique) is used in any given case, which is important.

Essentially, there are numerous ways that profiling can cause harm, not limited to the following:

1. Delaying the apprehension of an offender by providing false leads
2. Delaying the apprehension of an offender by pointing to false suspects
3. Delaying the apprehension of an offender by excluding viable suspects
4. Harming the personal life of a citizen by an implication of guilt based solely on the characteristics in the profile

The first three represent the fruits of inaccurate methods of profiling. Only the fourth represents a breach of ethics by virtue of misuse. However, an argument for unethical behavior is warranted if a criminal profiler continues to advocate and use methods, without proper warning to the end user, that are known to result in the first three.

There are numerous examples of the unethical uses of criminal profiles. Keep in mind what is meant by unethical use. Also keep in mind that what is unethical is not necessarily criminal. Consider the following cases.

Colin Stagg

In July of 1992, 23-year-old Rachel Nickell, her 2-year-old son, Alex, and their dog went for a walk on Wimbledon Common in London, England. Ms. Nickell was stabbed 49 times, right in front of her son. It was the country’s most publicized crime of that year. Law enforcement accepted the help of a psychologist who prepared a profile that reportedly described a man named Colin Stagg with a great deal of accuracy. However, law enforcement lacked any evidence that the man had committed a crime. They decided, with the psychologist’s help, to have a female officer engage in suggestive correspondence with him (Kocsis et al., 1998). According to Edwards (1998, p. 149),

Through an attractive blond undercover policewoman, the psychologist initiated an eight months’ liaison with the 31-year-old Stagg in which she shared violent sexual fantasies, confessed to the ritual sexual murder of a baby and a young woman, and egged him on to match her stories; even telling him that she wished he were Nickell’s murderer because, “That’s the kind of man I want.”

Stagg never claimed credit for the killing, but from 700 pages of letters and transcribed telephone conversations and public meetings, the psychologist (Paul Britton) concluded that Stagg’s fantasies, modeled upon information fed to him by those familiar with the details of the crime, revealed unique knowledge of the crime scene which could only be known by the murderer. Dragged before a judge in open court at the Old Bailey, defense quickly pointed out that Stagg hadn’t even made good guesses—he didn’t know the location of the crime and had wrongly asserted that the victim had been raped. ...
Clearing the accused and acknowledging the understandable pressure on the police, the judge was nevertheless forced to conclude that the operation betrayed "not merely an excess of zeal, but a blatant attempt to incriminate a suspect by positive and deceptive conduct of the grossest kind."

This case involved a psychologist who stepped beyond his expertise into the interpretation of crime scene behavior, who ignored inconsistencies in the suspect’s stories, and who ultimately set out to prove the police theory regarding the case despite the established facts.

Ultimately, Colin Stagg was not the only victim of this circumstance. On June 12, 1998, BBC News (1998) announced the following:

A woman detective at the center of a controversial undercover operation into the murder of model Rachel Nickell has taken early retirement.

The 33-year-old officer—who has been known only by her cover name of Lizzie James—has left the Metropolitan Police on health grounds following her “traumatic” role in the investigation of Miss Nickell’s death. …

Conversations and correspondence between Lizzie and Mr. Stagg formed the basis of the prosecution case when he went on trial at the Old Bailey. …

Lizzie, who has served 13 years in the Metropolitan Police, including time with Scotland Yard’s SO10 covert operations squad, continued to work following the Nickell investigation.

Fellow officers have claimed she never recovered from the trauma she suffered during her harrowing work on the Nickell inquiry, which was ultimately perceived as a failure.

Richard Jewell

On July 27, 1996, a backpack with a bomb in it was placed next to the AT&T Global Village stage in Centennial Park, in Atlanta, Georgia. Centennial Park was an open facility, crowded with people at the time, housing sponsors’ tents for the 1996 summer Olympic Games. The device, a pipe bomb, exploded at 1:20 a.m., killing Alice Hawthorne of Albany, Georgia, and injuring 111 others. A Turkish cameraman also died of a heart attack as a result of the blast.

Richard Jewell, a security guard working in the park, had just alerted police to the suspicious knapsack and was helping to evacuate people from the area moments before it exploded (CNN, 1996).

The portly 34-year-old security guard, with a soft Southern drawl and a passion for police work, was hailed for his bravery and professionalism after he found a bomb underneath a bench in Atlanta's Centennial Olympic Park.

He helped clear people from the area before the bomb went off early on July 27, 1996, quick action that likely saved lives. But despite what he did, Jewell never claimed the mantle of hero for himself. He was, he insisted, just doing his job.

But within days, the story of the Olympic Park bombing seemed to take an unbelievable, melodramatic turn: The Federal Bureau of Investigation (FBI) suspected that Jewell had planted the bomb himself. The tidal wave that overwhelmed Jewell began on the afternoon of July 30 when the Atlanta Journal-Constitution, citing unidentified law enforcement sources, published a special edition saying the FBI considered him a suspect (CNN, 1997b).
An FBI agent leaked information to the press that a psychological profile had identified Jewell, a private security guard at the time, as the likely perpetrator. The press published that Richard Jewell was indeed the FBI's prime suspect, saying that he matched an FBI profile that described the bomber as a former policeman who longed for heroism.

In their quest for potential clues, federal agents removed everything from firearms to dryer lint from the apartment in Atlanta that Jewell shared with his mother, Barbara, 60. In its original request for a search warrant, the FBI cited evidence that Jewell "had no girlfriend … lives and breathes police stories," and "was exposed to explosives and bomb instruction and lectures on two separate occasions." In short, the one-time police officer and campus security officer fit what some agents felt was the profile of a law enforcement wannabe who might plant a bomb and then "discover" it to win acclaim (Hewitt, 1996).

This was combined with the reports of other items taken from Jewell’s home during the service of search warrants, such as a collection of newspaper clippings describing Jewell as a hero. These elements added fuel to the media fire. When Jewell was brought in for questioning by the FBI, he was lied to. He was told that the questioning was not formal, nor was their interest in him as a genuine suspect. They led him to believe that they were using him as part of a training video for federal agents. It was an appeal to their perception of his need for attention.

However, when this all came to light and the search warrants failed to produce physical evidence of any kind, the FBI ultimately capitulated. Jewell was issued a notification that he was no longer a suspect. According to Collins (1996),

> The letter that finally arrived from US Attorney Kent E. Alexander, the prosecutor investigating the Atlanta bombing, fell far short of an apology, but it did free Jewell from the fear that he would be arrested at any moment. Jewell, the letter stated, was "not considered a target" of the investigation. "Barring any newly discovered evidence," it continued, "this status will not change."

That language does not foreclose a future investigation of Jewell, and some FBI agents still wonder if he was somehow involved. But absolutely no evidence has been found to link him to the bombing. The search of his mother's house yielded nothing. It would be impossible to make a bomb as crude as the one at Centennial Olympic Park without handling the powder, but no trace of explosives was discovered anywhere on Jewell, in his truck or at his home, even by the vaunted devices used by the FBI that can detect one part per trillion. "They know within days of going through his apartment that he didn’t do it, but they continued to accuse him," says G. Watson Bryant Jr., one of Jewell’s attorneys. "Their conduct is just despicable."

The special agent who had leaked the information to the press regarding the psychological profile was eventually reprimanded:

> FBI agents in Atlanta rallied in support of a fellow colleague Thursday after he returned to work following a five-day suspension without pay for his role in interviewing Olympic bombing suspect Richard Jewell.

> Several dozen people applauded as agent Don Johnson entered Atlanta FBI headquarters.

> Asked if [he thought] Johnson was a political scapegoat, agent Harry Grogan said, “Yes, I do.” The FBI suspended Johnson last week and censured Atlanta special-agent-in-charge Woody Johnson and Kansas City special-agent-in-charge David Tubbs for their roles in the Jewell investigation.

Jewell was never charged in the 1996 bombing at Olympic Centennial Park, and the FBI eventually cleared him of suspicion (CNN, 1997a).
ETHICAL GUIDELINES FOR THE CRIMINAL PROFILER

To both educate and restrain its members, the Academy of Behavioral Profiling (ABP) was the first professional organization to publish a set of ethical guidelines specifically designed to address the potential misconduct of criminal profilers. It also served the task of professionalizing criminal profiling as a formal discipline. The ABP Ethical Guidelines for Professional Conduct were first published in March of 1999. They were designed to prevent, check, and govern potential abuses of criminal profiles by criminal profilers engaged in research or casework. In 2010, the ABP changed to reflect the growth of the organization and the challenges facing the profession, and renamed itself to The International Association of Forensic Criminologists (IAFC). Additionally, the ethical guidelines were updated. According to the guidelines set forth by the IAFC (see www.profiling.org/abp_conduct.html),

1. Members shall conduct themselves in a professional manner.
2. Members shall not have a felony conviction, nor a conviction of a misdemeanor based on a felony charge. If a member is arrested on a criminal charge, membership will be suspended until the charge is resolved. If guilty, membership will be terminated.
3. Members shall not have a conviction related to perjury or false testimony. If a member is arrested on such a charge, their membership will be suspended until the charge is resolved. If guilty, membership will be terminated.
4. Members shall conduct all examinations and research in a generally accepted scientific manner.
5. Members shall assign appropriate credit for the work and ideas of others.
6. Members shall maintain an attitude of independence and impartiality in order to ensure unbiased analyses and interpretations.  
7. Members shall render opinions and conclusions strictly in accordance with the established facts and evidence in the case.
8. Members shall not misrepresent their qualifications.
9. Members shall not misuse their positions as professionals for fraudulent purposes, or as a pretext for gathering information for any individual, group, organization, or government.
10. Members shall not practice outside their area of competence.
11. Members shall recognize an obligation to be knowledgeable regarding the methods and research in their areas of practice, to include the scientific limitations for all professional opinions and testimony. They shall also strive to make those limitations clear to others, and to refrain from leaving false impressions of their findings or certainty. [Note: This guideline is of particular importance for members whose expert opinions and testimony may encroach upon the “ultimate issue.” In such cases, members are admonished to refrain from couching their findings in terms of guilt or innocence, as these are legal issues for the court to decide. They are further admonished to refrain from assuming guilt or innocence in their analysis, unless these issues have been conceded.]
12. Members shall not use a position of authority to exploit or coerce students or subordinates.
13. Members shall recognize an obligation to maintain the ethical standards of the professional community, and carefully weigh the need to report unethical conduct that they have observed to

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2 This author has a great deal of respect for the discussion on the subject of objectivity offered in Thornton (1997, p. 21): Personal bias may be reduced to a very low level but no prudent scientist would claim that it was forever absent. Personal bias is capable of being vanquished in a practical sense, but some circumspection and effort is required to do so. Bias that would cause the forensic scientist to embrace a position concerning the guilt or innocence of an accused is clearly improper. That sort of bias is easily recognized for its evil en se, however. More insidious is the sort of bias in which an analyst will engage to protect findings once they have been developed.
The appropriate authorities when feasible. [Note: This guideline is intended to recognize that IAFC members have an obligation to work toward reducing unethical conduct that exists in their sphere of influence. However, not all unethical behavior must be treated in the same fashion. Careful deliberation is required before action should be taken. The IAFC acknowledges that some ethical issues involve subjectivity; that the recognition and acknowledgment of unethical behavior may be treated as a training opportunity; and that reporting unethical behavior can involve consequences that outweigh any benefits of reporting. The IAFC also acknowledges that there are authorities who ignore such reports or who punish those who make such reports, rather than dealing with the offending parties. These and related factors may weigh in the balance with the respect to the decision of IAFC members to report unethical conduct.]

These guidelines do not represent a radical departure from those of other well-established professional and forensic organizations, such as the American Society of Criminologists (ASC), American Board of Criminalists (ABC), and the California Association of Criminalists (CAC). However, until we apply these guidelines to ethical issues that exist in the real world, they can seem too abstract, too obvious, or even irrelevant. Nothing could be further from the truth. Not only are these considerations vital and relevant to the issue of professional character, they have been ignored by many of those in the profiling community. This may be caused by an ignorance of good practice that is common to the less educated in the community, or it may be caused by the draw of fame and recognition—such as may be the case with profilers who establish themselves as perpetual media pundits.

THE MEDIA AND ENTERTAINMENT INDUSTRY: CONFLICTS OF INTEREST

Because of the high amount of emotional and sexual voyeurism inherent in the criminal profiling process, it has an equally high entertainment value. This attracts not only a large number of consumers to profiling-related media but arguably a high number of students to college courses on the subject as well. In any case, criminal profilers are constantly being asked to contribute to, to consult on, or to opine for, media-related projects on real or fictional offenders and offenses.

The relationship between the criminal profiler and the media should be the same as any other—the profiler should be there to educate. Not to alarm. Not to sensationalize. Not to judge. Not to condemn. Not to assume facts or guess about whether or not a missing child is dead or whether a suspect is guilty. The profiler is either a source of competent and informed knowledge based on objective forensic practice or serving no valid professional purpose whatsoever.

Books, Films, and TV

It is commonplace for film and television studios to call on the expertise of those with specialized knowledge to consult on projects that deal with technical subject matter or where an element of realism is crucial to the effectiveness of a project.

One example is author Thomas Harris, who was allowed the incredible, unprecedented privilege of consulting with the FBI’s then Behavioral Sciences Unit (BSU) for character and plot development relating to his acclaimed written work of fiction, *Red Dragon*, and the sequel, *The Silence of the Lambs*. In 1986, the De Laurentis Entertainment Group released the feature film *Manhunter*, based on *Red Dragon*, and in 1991, Orion Pictures released the Academy Award–winning film, *The Silence of the Lambs*. 
Bringing these works of written fiction to film elevated the members of the FBI’s then Behavioral Sciences Unit to superstar status. Arguably, this hurt the image of the BSU more than it helped it. The precedent set by the success of The Silence of the Lambs and other films, as well as the subsequent popularity of the published memoirs of several former FBI profilers, originally opened the door. Criminal profilers have been invited by the entertainment industry to act as creative consultants on numerous film and television projects dealing with the subject in the years since. Many of these programs promote the myth that criminal profiling involves psychic or paranormal ability. Given the bulk of the published literature in the field, it is evident that many criminal profilers seem to agree with this position. The ethical dilemma for the criminal profiler, then, is whether to participate as a creative consultant on a fictional project that endorses the supernatural as an aid to criminal profiling. This ultimately represents a public endorsement of misinformation about the field. As is discussed in the Preface to the Third Edition, there are a fair number of profilers who have no problem with this association, and even seek to promote it—based on personal beliefs as opposed to verifiable evidence.

**True Crime**

The true-crime market is in the business of dramatizing, vilifying, packaging, and selling the acts of violent, predatory offenders to the public. This has been the case for more than a few generations. As Vollmer (1949, p. 1) states,

> While it is true that glorifying crime is reprehensible and the making of heroes out of psychopathic criminals is abhorrent, there seems to be little that the public can do about it.

As we have already discussed, criminal profilers have made successful publishing forays into the realm of true crime through published memoirs. An ethical concern arises, however, when criminal profilers seek endorsement from those whose business is selling cases rather than solving them. This speaks to the old saying that one person cannot effectively serve two masters. One cannot effectively service the objective investigation of fact while financially attached to the dramatization of that fact for public consumption.

**News Agencies**

Very often, news agencies will contact criminal profilers and ask them to opine on a case that has captured the attention of the public for whatever reason. The first decision that a profiler should make is whether he or she is qualified to speak about a particular case. The second consideration is whether there is enough publicly available information to form any kind of relevant opinion. The third consideration is whether the public dissemination of the profiler’s opinion will be of harm or advantage to the case. It is not the policy of this author to give opinions on a case without a great deal of specific case information, which the media typically do not have. In most cases, the author will only discuss general profiling techniques and how they may be generally applied to a certain type of investigation. However, there are occasions when case material and court filings are available and can be the basis for specific comments.

A very real danger arises when a criminal profiler begins to perceive media attention as a form of professional validation. The profiler’s inflated ego can become so used to reading its own name in print that it becomes lonely for itself when not seen in the paper or heard on the news. Profilers may begin to do things specifically to attract media attention, or they may begin to solicit the attention of the media directly. In either case, this type of behavior inevitably undermines one’s public and professional credibility.
Case Example: Murdertainment

During the so-called Beltway Sniper shootings in October of 2002, criminal profilers from around the globe participated in wall-to-wall coverage of the investigation that ensued. Many offered specific profiles of the unknown suspect. One such commentator was Dr. Jack Levin of Northeastern University. As McGrath and Turvey (2003, p. 133) explain,

Professor Jack Levin, director of the Brudnick Center on Violence and Conflict at Northeastern University and author of several works on the subject of criminal profiling, came out with a profile similar to that offered by [former FBI profiler Clint] Van Zandt.

"The truth is he has other responsibilities in his life," criminologist Jack Levin said on Larry King’s program on CNN last week. "He may be married. He may be playing with his children, watching football on Sunday, or he may have a part-time job" (Farhi and Weeks, 2002).

When the snipers were captured, this profile proved to be inaccurate. Levin argued that even though inaccurate, his opinions were a public service that was intended to comfort.

"My predictions were not that close. But the average American was hungry for information," he said. "People wanted a story of who this guy was. What we did, by providing it, comforted them" (Gottlieb, 2002).

In this example, the prediction, based on nomothetic profiles that have been circulating for years, was inaccurate. There were two snipers; one was divorced and unemployed; neither was from the area; and both were black. In defense of these inaccurate opinions, it was argued that the purpose of having profilers on TV is to comfort the public in times of crisis—any information, even if false, is helpful. This author disagrees wholeheartedly and would argue that profilers have an ethical duty to refrain from participating in what can only be described as comfortainment, in service of the murdertainment industry that has arisen to satisfy the appetite of the 24-hour news cycle. Ironically, the criminologist in question revisited the sniper case a year later with an op-ed piece in USA Today, which asked the question, "So how did we start down this road to our exaggerated view of serial snipers?" (Fox and Levin, 2003).

HIGH STATION: ABUSING POSITIONS OF POWER

Criminal profilers, whether employed by an investigative agency, a university, or in private practice, may find themselves in positions of authority over students or other subordinates. For ethical profilers, this is a chance to mentor a new mind and help influence their educational journey. It is an opportunity to give opportunities and to build much-needed confidence and esteem. It is an occasion to help shape a future colleague. For unethical profilers, these relationships are an opportunity to exploit students and subordinates for personal gain. This can involve everything from uncredited work to trading on sexual favors.

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3 It should be noted that three of those who refrained from giving specific profiles for lack of information were the author of this text; Dr. Michael McGrath, and Det. John Baeeza (NYPD, retired). Restrain in the face of great pressure to be entertaining and give certain answers is not easy, but it is responsible.

4 Comfortainment is defined by the author as providing reassuring, if incorrect, opinions and commentary to the public through media programs designed to entertain more than they are designed to provide accurate information. Murdertainment is defined by the author as providing sensational coverage of incidents involving death and violence through media programs designed to entertain more than they are designed to provide accurate information.
Far from being a unique problem to the field of criminal profiling, subordinate abuse by those in positions of power is common. It may come about because those in high station exert an influence—either conscious or unconscious—on those who are below them or because those lower in station seek out the higher up to gain purchase in an already competitive field.

The temptation to engage in exploitative relationships can be substantial. It is up to the individual practitioner to recognize and to assess every subordinate relationship for what it is worth and the subsequent solutions to individual problems when they arise. While inappropriate relationships and solutions are many and varied, the best cure is prevention; avoid any such relationships at all costs and learn from any mistakes that one may make in recognizing they exist.

That such inappropriate relationships exist at all is a real issue worthy of consideration, but as with all things there are various levels of severity within the abuse of power. For instance, the profiler who finds himself or herself in a situation where ethics and integrity are compromised is one thing, but the profiler who knowingly and repeatedly places himself or herself in such positions—even plans for and anticipates them—is another. Different again is the situation whereby the individual actively exploits subordinates, such as may exist for research benefit or where the subordinate produces work product under the name of the supervisor—that is, prostituting the student for personal gain while leading the student to believe there will be something for him or her in the relationship at the end of the day.

In defense of such relationships, it is often argued that the subordinate is not a victim at all, but a mature volunteer in a consensual arrangement. However, the disparity of power prevents such seemingly logical decisions from being made. What's more, any such situation may not become an issue until some part of the relationship goes bad. If and when this happens, the student will always be on the losing end of the transaction.

To be clear on this issue, the critique is not aimed at those few people who establish friendships or deep and meaningful relationships with students or colleagues who may at some time have served under the professional in question. Rather, it is aimed at the professionals who have made a habit of preying upon those who are subordinate to them, whether they are students or colleagues, through the abuse of their position as someone in authority. Many institutions have actually anticipated this problem by ruling against such relationships; certain bodies may terminate the employment of individuals who are habitually abusive, and others may ignore it entirely for fear of a wrongful termination suit. Ethical profilers will strive to avoid such unbalance relationships and will further seek to develop their students and subordinates rather than exploit them.

**ETHICS IN PUBLISHING**

Criminal profilers have a responsibility to ensure that any research they publish is both relevant and honest. This means that the data being studied must be related to the questions posed, as well as the subsequent problems that the research will be applied to. This also means that publications may not assume facts for the purpose of convenience, and they must strive to not misrepresent the existing literature.

**Example: Assuming or Inferring Legal Guilt for Research Purposes**

A recent publication that raises concerns is an article by Santilla et al. (2003), titled “Inferring the Characteristics of an Arsonist from Crime Scene Actions: A Case Study in Offender Profiling,” which was published in a police journal. The purpose of the article was to showcase investigative psychology (IP) as a
valid profiling technique using a single case example. An IP profile was rendered during a criminal investigation, and the results were later compared against the primary suspect in the case. As explained in Santilla et al. (2003, pp. 5 and 12),

The accuracy of these predictions was evaluated against information concerning the suspect in the case. ... The characteristics predicted, based on the findings of Canter and Fritzon (1998), were in good accordance with the actual characteristics of the suspect in the case. Also, it was possible to provide fairly good estimates of the home location of the suspect based on the crime locations. There was a difference between those predicted characteristics that were based strictly on the Canter and Fritzon model and the spatial predictions which were more accurate compared to predictions based on "common sense."

To be clear, the stated purpose of the article was not to merely provide a case example and showcase the IP method. It was to argue the veracity of IP by determining if the results were "in good accordance with the actual characteristics of the suspect." On the surface, and to a primarily law enforcement audience, this may seem an acceptable practice.

However, the only way to measure the accuracy of IP predictions in this case is by a direct comparison with the characteristics of the actual offender. The suspect in the case at hand was not charged, let alone convicted, of any offense. The article presents the suspect and begs the reader to assume guilt, as the authors do, because he is the suspect. The distinction between suspect and offender is not clear in the purpose and mechanics of the article. By comparing the profile to the suspect, the article is either assuming guilt or proposing guilt. Otherwise, again, any comparison of predicted characteristics has no value.

The author wrote one of the co-authors of this case study and requested clarification of these ethical issues. In her response, the co-author asserted that the issue of actual guilt had been raised before publication among the co-authors, but that the purpose of the article was not to address the accuracy of the method so the point was moot. This response stated precisely the opposite of the language in the publication. The co-author then explained that the suspect was essentially as good as guilty from a law-enforcement perspective, and that's what gave the case study value (Fritzon, K., personal communication, July 30, 2007):

In fact, the outcome was that the state prosecutor (an independent nonpolice body in Finland) decided that the direct physical evidence was not strong enough to proceed. This is quite different from being found not guilty, as you know. There was, in fact, a lot of circumstantial evidence (i.e., he was seen leaving the scene of several of the arsons). ...

I think that the validity and utility of the profile to some extent depends on the perspective. From the police perspective, they found it a helpful and interesting input to their investigation. You may not find it "scientific" although, in fact, it remains an open hypothesis as further evidence may at some point be gathered.

I would finally add that the article was peer reviewed and also commented on by the editor, and no one seemed to have a problem with the issue.

It is true that the IP profile may have been helpful to police in their investigation. However, this is separate from the issue of publishing the profile in comparison with the suspect's characteristics to validate IP methodology. Unless readers can assume guilt, this exercise cannot satisfy the stated purpose of the article. Suspect guilt is a hypothesis in this case. So is suspect innocence. These are legal determinations outside the scope and service of scientific research.
To be abundantly clear, comparing a profile against the characteristics of a suspect is an exercise in futility with respect to testing the veracity of a given method. The only exception would be if that suspect has been found guilty in a court of law. Even then, guilt is a legal classification—those who are actually innocent may be found legally guilty and the opposite is also true. These limitations must be boldly expressed along with the conclusions of any such study in the interests of scientific honesty.

**CRIMINAL PROFILING AND FORENSIC FRAUD**

Criminal profilers engage in forensic fraud when they provide sworn testimony, opinions, or reports bound for court that contain deceptive or misleading findings, opinions, or conclusions, deliberately offered to secure an unfair or unlawful gain. As Turvey (2003) notes, forensic frauds tend to fall into one of three general categories: simulators, dissemblers, and pseudoexperts.

**Simulators**

Simulators, the most common form of forensic fraud, are described in Turvey (2003):

Simulators are those who physically manipulate physical evidence or related forensic testing. This means that they either fabricate evidence or destroy it for a particular gain. The inept simulator seeks to conceal their own lack of skills, abilities or proficiency, much like a plagiarist that hands in a term paper they did not write. They are aware of their own shortcomings or mistakes, and will fabricate or destroy evidence to keep it a secret. The apathetic simulator is lazy, crunched for time, or strapped for resources. In any case, they are not concerned about the consequences of falsifying results, and may even feel entitled to do so. The less they do, the easier it is for them all around. The egotistic simulator invents results specifically for personal and/or financial gain. They have a reputation for results, and they are going to maintain it at all costs. By doing so, they hope to ensure their use on future cases and in some extreme cases maintain their “celebrity” status amongst colleagues. The altruistic simulator fabricates or destroys evidence to assist the circumstances for someone that they feel will otherwise be denied justice, such as a criminal defendant or a colleague. They feel that fabricating or destroying evidence is sometimes morally right, and therefore necessary.

In the criminal profiling community, simulators are not unheard of. Consider the following case example.

**Case Example: JonBenet Ramsey**

On December 26, 1996, 6-year-old JonBenet Ramsey was found murdered in the basement of her parents’ home in Boulder, Colorado, 8 hours after she was reported missing. Suspicion immediately fell on the parents. They hired an attorney, a publicist, and a retired FBI profiler to publicly defend their interests.

In January of 1997, the retired FBI profiler appeared on Dateline NBC. He stated, based on his interview of John and Patsy Ramsey (together) and his examination of the facts of the case, that he knew in his heart that they could not have killed their daughter. To bolster his opinions, he stated that officials involved with the case had briefed him on the autopsy report.

Reporters following the story tried to verify the retired FBI profiler’s account, but they could not find any officials who would admit to having briefed him about the autopsy report. When that story broke, the retired FBI profiler was forced to change his story. Two days later on Larry King Live, he stated that the only briefing he received on the JonBenet Ramsey autopsy report came from the Ramsey family lawyers; his knowledge of her autopsy was third-hand. As Brennan (1997) explains,
Former FBI profiler John Douglas has conceded that the only briefing he received on the JonBenet Ramsey autopsy report came from the Ramsey family’s lawyers.

In a one-hour interview Thursday on Larry King Live, the criminal profiler hired by John and Patricia Ramsey to help solve their 6-year-old daughter’s murder said his knowledge of her unfinished autopsy report is third-hand.

“I was briefed by the attorneys” representing the Ramseys, Douglas said. He said he has not seen the final report.

This contradicts statements on Dateline NBC Tuesday night that Douglas had been briefed on the autopsy report. The next day, no officials connected to the murder investigation admitted having done so.

Boulder County coroner John Meyer will ask at a Feb. 12 hearing in Boulder District Court to have the report sealed. It is not expected to be completed until then.

Los Angeles criminal defense attorney Leslie Abramson, who defended Erik and Lyle Menendez in the murders of their parents, was also a guest on King’s show.

“How could the defense attorneys be briefing Mr. Douglas on the autopsy when they don’t have a report?” she asked.

When King repeated the question, Douglas answered, “You’d have to bring them on as a guest.”

Douglas defended his analysis concerning the murder of JonBenet, who was discovered in a remote room of her family’s basement Dec. 26, about eight hours after her mother discovered a ransom note demanding $118,000 for the girl’s safe return.

Douglas told King that he was limited in what he could say about the murder because he’d been told by the Ramseys’ lawyers he may be called before a grand jury.

In this case, the retired FBI profiler simulated the existence of evidence (an autopsy report) and individuals (unnamed officials and attorneys), whom he claimed to have been briefed by with respect to autopsy findings. He then used these nonexistent briefings as part of the basis for his interpretations about the nature of the crime and his subsequent opinions regarding the Ramseys’ innocence—to bolster his credibility with respect to having examined evidence. Unfortunately, his accounts were not consistent, and nobody would corroborate them.

**Dissemblers**

Dissemblers are those forensic examiners who exaggerate, embellish, lie about, or otherwise misrepresent their actual findings. They are the second most common form of forensic fraud. As Turvey (2003) describes,

> Dissemblers exist on a continuum from those who lie outright about the significance of their findings to those who simply present a biased or incomplete view. As discussed in Saks (2001):

A more ambiguous version of this [forensic fraud] is the proffered expert who comes from a field that has valid knowledge and is capable of doing sound work, but in the case at bar the expert has failed to perform according to the expected standards (“with the same intellectual rigor,” as some courts and commentators have put it) and that looseness has produced less reliable results (which presumably leads to conclusions that tilt the testimony further in the direction of the proponent’s preferred position).

Consider the following case example, which involves confessions of dissembling.

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**Criminal Profiling and Forensic Fraud**
**Case Example: Waco**

In April of 1993, the siege of the Branch Davidian property (at Mount Carmel) in Waco, Texas, by the FBI and the ATF ended after 51 days with the death of their charismatic leader, David Koresh, and 85 of his followers. The dead included men, women, and children, all of whom died in a fire that started about six hours after FBI agents began spraying tear gas and ramming the building with tanks (Hancock, 2000).

When an FBI profiler warned the FBI against breaching the compound, he was told to change his opinions or he would be sanctioned. According to the *New York Times* ("FBI Agent at Waco Says Bureau Pressured Him on Koresh Reports," 1995),

> Peter Smerick, the FBI’s lead criminal analyst and profiler of Koresh, has broken his silence to charge that bureau officials pressured him into changing his advice on how to resolve the situation without bloodshed.

> Smerick, now retired from the bureau and working as a consultant in the Washington area, said he had counseled a cautious, non-confrontational approach to Koresh in four memos written from Waco for senior FBI officials between March 3 and March 8, 1993.

> But he was pressured from above, Smerick says, as he was writing a fifth memo March 9. As a result, that memo contained subtle changes in tone and emphasis that amounted to an endorsement of a more aggressive approach against the Davidians.

> The following month, the FBI got the go-ahead from Attorney General Janet Reno for its plan to inject tear gas into the compound. Koresh and his followers then set the place on fire, according to a Justice Department review of the siege.

Also, according to Hancock (2000),

> Although no one plainly stated that he would be censured, Mr. Smerick said in 1995, he felt unmistakable pressure to change his advice. He added in the confidential interview that he believed that “the traditionally independent process of FBI criminal analysis … was compromised at Waco.”

> Mr. Smerick told interviewers that he quit writing after submitting an “acquiescent” final memo that omitted previous cautions against pushing the sect and incorporated suggestions from his Washington boss for tactical pressure. He said he left Waco “in frustration” on March 17, though he kept in contact with some negotiators.

Smerick admitted to altering his opinions under pressure before Congress, as discussed in Zeliff (1995):

> Opening statement, Congressman William H. Zeliff, Jr., Tuesday, August 1, 1995:

> ... How much more plainly do words come than as written by Roger Altman in his striking memo of April 15th to Secretary Bentsen. Mr. Altman is not in the decision-making process, yet he sees the predictable nature of the tragedy—“the risks of a tragedy are there,” he says.

> Meanwhile, Mr. Smerick at the FBI writes four memos discouraging a shift away from negotiations to a tactical response. He writes until—he feels that he has to change his recommendation because—in his words—he must please those above him, including the director of the FBI.

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5 The actual number of victims killed at Waco is a matter of some debate. Reliable news agencies as well as the FBI report the number differently. The FBI claims that David Koresh is to blame for these discrepancies because he gave out false information about the number of people living at Mount Carmel.
Peter Smerick’s then supervisor, John Douglas, has corroborated this version of events. According to Worden (1999),

Among the negotiators embroiled in the conflict, and one who felt pressured to remain silent about
information provided to him from negotiators in the field, was John Douglas. A 25-year veteran of the
FBI, he was at the time chief of the FBI’s investigative support unit that supplied negotiators to the
operation. …

“I felt I had no choice but to keep my mouth shut or I’d be rustling cattle somewhere,” he said.

Douglas was part of the behavioral science group, comprised of criminal profilers, analysts and
psychologists. The group clashed repeatedly with the hostage rescue team—the more powerful tactical
side—which dismissed the behavioral scientists and wanted action-oriented results, Douglas said. …

During a meeting at the FBI’s command center in Washington a week before the ill-fated assault
on the compound, Douglas recalled being asked for a status report by Sessions. Among those in the
room, according to Douglas, were FBI Deputy Director Floyd Clarke, Assistant Director of Criminal
Investigations Larry Potts, Deputy Assistant Director Danny Coulson, and Criminal Investigations
Section Chief Michael Kahoe.

Douglas briefed Sessions on the psychological profile his field negotiators had developed about
Koresh and his followers.

“I told [Sessions] there was a possibility of [Koresh] being violent … although I didn’t think he had
been driven to that point yet,” said Douglas. “I told him as long as he was talking to us, there was no
danger he would harm anyone.”

About 20 minutes into his presentation, Douglas said, Potts, Coulson, and Kahoe left the room and
asked a lower-level agent to bring Douglas outside. “I thought it was very strange being summoned
out of a meeting with the director,” said Douglas. Outside the room, Douglas said, Kahoe turned to
him and said: “We don’t want you talking to the director. There are certain things we don’t want the
director to know. We’ll be the ones to brief him.”

Douglas said the meeting abruptly ended at that point before he had an opportunity to discuss the
widening rift between tactical strategists and the negotiators.

According to both FBI agents involved, Attorney General Janet Reno acted on false information provided by
one, who agreed to change his last report under pressure from the other (his supervisor), who was in turn
under pressure from his bosses at the FBI to favor a breach at Waco.

According to their own accounts, both agents agreed to alter their professional expert opinions as criminal
profilers regarding Waco to favor those of their supervisors, for fear of losing their jobs or other sanctions.
This was a decision that both understood could cost lives.⁶

If either now ex-FBI agent gets in front of a jury to offer expert testimony, opposing counsel will likely ask
the following question: “Have you ever changed your expert opinion for money when you thought people
might die as a result?” For both, given their admissions and congressional testimony, the answer to this
question can only be Yes.

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⁶ Changing, altering, or tailoring one’s professional/expert opinions for financial reasons is, arguably, one of the most unethical things
that a professional can do. Add to this the strong possibility that changing or altering one’s opinion may cost lives, and it becomes the
most egregious of all unethical conduct, in the opinion of this author.
Pseudoexperts

At times, experts may misrepresent the nature or quantity of their qualifications. Their reasons may be to have the court see them as eminently more qualified than they actually are or to be allowed to give evidence in an area in which they are not really qualified. Either way, it is a form of fraud. Pseudoexperts are those who fabricate or misrepresent expert credentials such as college diplomas, expert certifications, professional affiliations, or case-related experience (Turvey, 2003). Such fraud is without question the easiest form to investigate and screen. Unfortunately, it remains common within the forensic community in general, in forms both subtle and gross. Consider the following case examples.

Case Example: Fabrication of Credentials and Experience

In a 1982 case, the defense discovered and a federal appeals court agreed that a now-retired prison therapist and criminal profiler perjured himself in regard to his qualifications during sworn expert testimony in a double homicide shooting case. According to the record in Drake v. Portuondo (2003),

The prosecution informed defense counsel on the Thursday evening that it intended to call a psychologist named Richard D. Walter to testify about psychological profiling. On the Friday, the prosecution successfully moved to add Walter as a witness, and Walter mounted the stand. Under the announced schedule, defense counsel would have no more than a weekend to get a competing expert, if needed, or for that matter to prepare his cross-examination.

The prosecution concedes that Walter’s testimony was intended to reinforce what it perceived as weaknesses in the evidence supporting its theory of intent. The prosecution also concedes that Walter was referred to them by Dr. Levine, the forensic dentist, and that the prosecution did not independently investigate Walter’s qualifications.

Walter conceded at the outset that he had not examined Drake or reviewed his medical records, and would rely on his review of grand jury testimony, medical evidence and the police record. Walter opined on that basis that Smith and Rosenthal had been the victims of a specific type of “lust-murder” called “picquerism” (a derivative misspelling of the French verb “piquer,” which means, among other things, to stick or poke). See Trial Transcript at 794. According to Walter, picquerists achieve sexual gratification by biting, shooting, stabbing, and sodomizing their victims (though not all picquerists do all these things). This supposed syndrome accounted for much of the physical evidence in medical terms that dovetailed with the prosecution’s theory of intent.

It is now apparent that Walter’s testimony concerning his qualifications was perjury. He claimed extensive experience in the field of psychological profiling, including: work on 5000 to 7500 cases over several years in the Los Angeles County Medical Examiner’s Office; an adjunct professorship at Northern Michigan University; more than four years as a prison psychologist with the Michigan Department of Corrections; and expert testimony given at hundreds of criminal trials in Los Angeles and Michigan.

On the Monday following Walter’s testimony, defense counsel told Justice DiFlorio that the defense had searched over the weekend to retain a rebuttal psychologist, but could not find any expert who had ever heard of “picquerism.” The defense requested a two-week continuance to find a psychologist with the expertise required. The prosecution successfully opposed a continuance.

Years after exhausting his direct appeals, Drake discovered evidence, through his own research in prison, that Walter had lied about his credentials. Although Walter is a prison psychologist with the Michigan Department of Corrections, Drake found suggestive evidence that Walter lied about...
his other credentials. As the prosecution now concedes, Walter performed no criminal profiling in the Los Angeles County Medical Examiner’s Office. According to Walter’s supervisors there, he was employed as a lab assistant responsible for cleaning and maintaining the forensic lab. There seems to be no record that Walter was ever on the payroll of Northern Michigan University, where he claimed to be an adjunct professor. The Los Angeles County District Attorney’s office has found no record of Walter testifying as an expert witness in a criminal proceeding between October 1975 through May 1978.

In 1995, Drake moved to vacate his conviction and sentence pursuant to N.Y. C.F.L. 440.10 on the basis of the newly discovered evidence concerning Walter’s perjury. …

For the foregoing reasons, we vacate the district court’s judgment denying Drake’s petition for habeas relief, and remand to the district court for discovery and a hearing (if the district court in its discretion considers that a hearing is needed) on whether the prosecution knew (or should have known) that its expert, Richard D. Walter, was committing perjury.

Subsequent to this 2003 decision, further court filings addressed the issue. As explained in Drake v. Portuondo (2006),

On September 30, 2004 Respondent filed the Motion for Summary Judgment in which it argued that Walter did not commit perjury at trial and that, even if the Court concludes that he did commit perjury, the prosecutor neither knew nor should have known of the perjury. On June 15, 2005 Drake filed a response to the Motion. The Court received Respondent’s reply on June 21, 2005 and oral argument on the Motion was heard on June 24, 2005.

Federal judge John T. Elfvin ultimately concluded, based on the profiler’s testimony and its context, that it was reasonable to presume that he had indeed given false testimony with regard to his qualifications. Moreover, Judge Elfvin found that the profiler had made additional false and misleading statements about his credentials while under oath that could not be conclusively referred to as perjury, which is a specific legal charge. This is detailed in Drake v. Portuondo (2006):

Drake asserts that Walter committed perjury at trial by testifying falsely concerning his qualifications as an expert and concerning his prior work experience. Specifically, Drake challenges Walter’s statements as to his work history with the Los Angeles County Medical Examiner’s Office, his licensure as a psychologist, his prior scholarly publications, his teaching experience and his prior testimony as an expert witness. In its January 31, 2003 decision, the Second Circuit concluded that Walter had testified falsely. The Court stated:

“He claimed extensive experience in the field of psychological profiling, including work on 5000 to 7500 cases over several years in the Los Angeles County Medical Examiner’s Office, an adjunct professorship at Northern Michigan University; more than four years as a prison psychologist with the Michigan Department of Corrections; and expert testimony given at hundreds of criminal trials in Los Angeles and Michigan.” Drake, 321 F.3d at 342.

Ordinarily, in light of such a statement by the Second Circuit, Walter’s perjury would be presumed. However, Respondent urges the Court to review Walter’s trial testimony because it asserts that much of Walter’s testimony was true and that—even if portions of Walter’s testimony were factually incorrect—Walter did not intentionally testify falsely and thus the incorrect testimony does not constitute perjury under the law. Respondent’s argument misses the point that a conviction knowingly based on false evidence, even that which does not rise to the level of perjury, is subject to reversal. See Thomas v. Kuhlman, 255 F. Supp. 2d 96, 108 (E.D.N.Y. 2003) (citing United States v. Boyd, 56 F.3d 239, 243
(7th Cir. 1995)). On the other hand, perjury is defined as “false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake or faulty memory.” United States v. Dunnigan, 507 U.S. 87, 94 (1993). Because Respondent argues, in part, that Walter’s trial testimony was not false, the Court will examine each of the challenged areas of Walter’s trial testimony in turn.

1. Licensure

Drake takes issue with Walter’s characterization of his occupation at the time of the trial as a “prison psychologist” for the Michigan Department of Corrections. Drake asserts that such statement is false because, under Michigan law, a psychologist must possess a Ph. D. Drake contends that, as Walter had obtained only a Master’s Degree, his license was only that of a “limited psychologist.”

Walter testified at trial that he held a Master’s Degree only and that he was a “prison psychologist.” Trans. at 783.3. On cross-examination Walter confirmed that he did not possess a Ph. D. Trans. at 805. At his deposition in this case, Walter defended his use of the title “prison psychologist.” Walter stated that, in Michigan, one with a Master’s Degree may receive a limited license in psychology. Walter Dep. at 80. Ordinarily, one with a limited license must work under the direction of a fully licensed psychologist. Id. at 80–81. Walter testified, however, that the Michigan Attorney General in a 1979 Opinion stated that there is no requirement for such supervision when the limited psychologist works for a governmental entity or non-profit organization. Ibid. Based on that same Opinion, Walter testified that limited psychologists are permitted to use the title “psychologist” within such settings. Walter Dep. at 80–81.

This Court cannot conclude that Walter misrepresented his qualifications when he testified at trial that he held only a Master’s Degree and clearly stated that he did not possess a Ph.D.; nor can the Court conclude that Walter testified falsely when he characterized his then-current occupation as that of “prison psychologist.”

2. Publications

Drake next asserts that Walter testified falsely concerning his prior publications. At trial, Walter was asked if he had written any papers. He responded “Yes.” Trans. at 784. At his deposition, Walter reiterated—albeit with some confusion as to the relevant dates—that he had written a paper prior to the Drake trial, but that it was presented and published after the trial. He stated:

Q: Okay. Prior to October 19th of 1982, had you published anything in the Journal of the American Academy of Forensic Sciences?
A: No. [Walter Dep. at 34.]
Q: You said you delivered an address concerning the topic [of the paper] but hadn’t actually written the paper yet?
A: I had not published the paper. I had written it not published it.
Q: Okay. And you believe that you delivered it at a January meeting, did you say?

7 The Michigan Department of Corrections recently listed an available position for a “psychologist.” Linked to that listing is a copy of the Civil Service job description. That description states that an applicant for the position of “psychologist” must possess a Master’s Degree in Psychology. See www.michigan.gov/documents/Psychologist_12904_7.pdf. The job description states that “[c]ompanies in this job complete or oversee a variety of professional assignments to provide psychological treatment to residents of state facilities and community based programs. Positions in this class are located in mental health facilities, prisons, youth residential facilities, and veterans hospitals.”
A: No, February.
Q: February meeting?
A: Yes.
Q: Which would have been when, what year, if the testimony you gave in the trial—
A: In ’81.
Q: —was in 1982 October?
A: Oh, it would have been ’82 then.

Walter Dep. at 42–43.

The Court concludes that Walter did not testify falsely at trial when he testified only that he had written a paper prior to his testimony. As Walter never testified at trial that said paper was published, any inconsistency in his deposition testimony regarding the dates of the presentation and publication of that paper is irrelevant. 8

3. Teaching Experience

Drake also asserts that Walter testified falsely that he was an “adjunct lecturer” at Northern Michigan University. Drake argues that the term “adjunct lecturer” is an academic title that Drake was not entitled to use and that left a false impression with the jury.

At trial, Walter was asked “Do you teach at all?” Trans. at 784. In response, he stated “I’m adjunct lecturer at Northern Michigan University.” Ibid.

At his deposition, however, he elaborated on the nature of his relationship with that institution—to wit, he had lectured as a guest of a professor at Northern Michigan University. Walter Dep. at 68–71.

Walter defended his use of the term “adjunct” as factually correct within its ordinary meaning because he meant adjunct with a lowercase a, not a capital A. Walter Dep. at 68, 72. Although he wished he had used the term “guest,” Walter disputed that the jury could have been misled by his testimony at trial.

He stated: “Inasmuch as its [sic] part of the English lexicon, I don’t apologize for using the word in its proper context. Whether [the jury] choose [sic] to understand it or not is a misfortune of their’s, not mine. I prefer to—I would have preferred to have said guest. I used the word adjunct.” Walter Dep. at 75.

While this Court is dismayed at the cavalier attitude displayed by Walter, it cannot conclude that Walter’s use of the term “adjunct” rendered his testimony false as a matter of definition. The word adjunct is defined as “a person associated with or assisting another in some duty or service.” Webster’s Third New International Dictionary 27 (1965). In the context in which the question was asked, however, Walter’s response was—at best—misleading. 9

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8 Exhibit 3 to Drake’s Memorandum in Opposition to this Motion is a copy of an article entitled “Anger Biting” which was published in the September 1985 issue of the American Journal of Forensic Medicine and Pathology. The publication contains a notation that the paper was first presented to the Odontology Section of the American Academy of Forensic Sciences in February 1983.

9 Neither party addressed the significance, if any, of Walter’s use of the present tense. Walter stated, “I’m adjunct lecturer.”… No evidence was adduced as to whether—at the time of trial—Walter continued to lecture as a guest at that institution. His response, however, left the impression that his affiliation with that institution was ongoing.
4. Experience as an Expert Witness

Drake further argues that Walter’s trial testimony was false with respect to his prior experience testifying as an expert witness. The Second Circuit agreed, noting that Walter claimed to have testified in “hundreds of criminal trials in Los Angeles and Michigan.” Drake, 321 F.3d at 342. The Court must first note that the Second Circuit’s characterization of Walter’s trial testimony is incorrect. Walter never claimed to have testified at hundreds of trials. Rather, he claimed to have been qualified in one or two jurisdictions. Walter was never asked how many times he had been so qualified.

Q: Have you ever been qualified to testify as an expert witness in any criminal court?
A: Yes.
Q: And in what states and jurisdictions, if you would please.
A: In California, Los Angeles County and in Pasadena.

Trans. at 785. Notwithstanding the fact that Walter did not claim to have testified hundreds of times, there is no doubt that even his actual—more limited—trial testimony was factually incorrect and thus, false. At his deposition, Walter reiterated his prior experience as an expert witness. He could recall testifying only in two prior cases, one murder case and the “Mazda” case. When questioned about the substance of his prior expert testimony, however, Walter revealed that he testified in the murder case in his capacity of the custodian of the evidence—a chain of custody matter—not as a psychological expert. Walter Dep. at 87–88. Walter defended his characterization of his testimony as “expert” because he believed that such testimony was in fact expert testimony. Ibid. The second matter in which Walter could recall testifying prior to the Drake trial was the “Mazda” case—a civil, not a criminal, case. Thus, his testimony in that case was not relevant to the prosecutor’s question at trial which specified qualification as an expert in any criminal court.

Although Drake has demonstrated that Walter’s testimony at trial was factually incorrect, and thus false, he has not shown that Walter gave such false testimony intentionally. However, as discussed above, the relevant issue is whether Walter’s trial testimony concerning his qualifications was false. Accordingly, the Court concludes that portions of Walter’s testimony concerning his past qualification as an expert witness were false.

5. Los Angeles County Medical Examiner’s Office

Finally, the area of most concern is Walter’s trial testimony relative to his work experience in the Los Angeles County Medical Examiner’s Office. At the beginning of his testimony on direct examination on this topic, Walter testified that he was: “a student professional worker at the time, while I was taking an academic course work in criminal justice. While I was there I consulted with the prosecutors, the police agencies and various investigative agencies. I related to and the pathologists related to mording cause of death and profiling for possible leads.”

Trans. at 788–89. Walter testified that, in his position, he had personal involvement in 5,000 to 7,500 cases. Trans. at 789–790. He testified that, in some cases, he would view the decedent’s body, confer with pathologists and others, discuss the case with police and investigators and develop a “profile.” Trans. At 791. He testified that the purpose of a profile: “was not only to help the pathologists and the investigating agencies figure out what happened, but also then towards leads in resolving the case, whether it was a completed case or understanding the motive behind what occurred. And sometimes that’s very complex, so they would take the aid of the profile.”

Trans. at 791.
What is problematic about Walter’s testimony is that, while he may have engaged in such tasks as he described at trial, he was not employed to engage in those tasks. In fact, his employment was for the purpose of working in and maintaining the toxicology laboratory. There is no evidence to suggest that Walter engaged in profiling activities at the behest of the Medical Examiner’s Office. To the contrary, there is evidence in the record to suggest that, when the Medical Examiner’s Office required profiling, it was conducted by the Medical Examiner himself.\(^{10}\)

A portion of the statement contains the following questions and answers:

Q: In the course of your employment with the Medical Examiner’s Office, did you and/or the [Forensic Science Laboratory] ever prepare psychological profiles, or utilize psychological modeling, or otherwise employ behavioral science to create a composite of a suspect in a criminal case?
A: No, but the Medical Examiner himself did.
Q: If the answer to the above was yes, please explain[.]
A: In certain high profile cases, the medical examiner—Dr. Noguchi [sic]—would have a psychological profile drawn of a yet to be identified murderer. To my knowledge, he never used his own staff.

Statement of Dr. Ronald Taylor, attached to Drake's Objections to the Report and Recommendation.

An affidavit submitted by Dr. Ernest Griesemer, who worked with Walter at the Medical Examiner’s Office, indicates that Walter’s primary responsibility was to maintain the laboratories at the Medical Examiner’s Office. See Drake’s Opp’n Mem. at Ex. 6.

In an effort to demonstrate that Walter was more than a mere student assistant, Respondent points to another letter written by Dr. Griesemer to the Ethics Committee of the American Academy of Forensic Sciences in October 1995.

See Resp’t’s Summ. J. Mot. at Ex. A. Griesemer’s letter states in part: “Richard Walter worked in the Forensic Sciences Laboratories of the Department of Coroner, Los Angeles County, Los Angeles, California for two and a half years from 1/76 to 8/78. He was employed as a Student Professional Worker and worked with Forensic Sciences, Toxicology and Histopathology Laboratories and their storage. ...

“When he was working here, I noted that Mr. Walter would read through as many of these reports and review items as he could and he was continually discussing cases with Coroner’s staff members detectives, and insurance investigators. I always had the feeling he was striving to search out the facts and achieve a more complete understanding of underlying circumstances and individual causes of death for specific Coroner’s cases.

“Mr. Walter also attended the periodic case reviews and scientific discussions including Psychological Profiles held by the Coroner. He also attended the scientific departmental discussions in meetings of both the Toxicology Section and the Forensic Investigations Section of the Coroner’s Department. He sought and was sought after for one-on-one discussions with pathologists working on specific cases and presented materials in some of the meetings. He discussed evidence and case details with Toxicologists and with Forensic Science Investigators in the Department.”

\(^{10}\) Attached as an exhibit to Drake’s Objections 7 to the Report and Recommendation issued by Magistrate Judge Schroeder is a sworn statement from Dr. Ronald Taylor, who from 1973 to 1981 was the Director of the Forensic Science Laboratory for the Los Angeles County Medical Examiner’s Office. The statement is in the form of Taylor’s answers to written interrogatories.
Ibid. While the letter sheds some light on Walter’s activities during his employment with the Medical Examiner’s Office, it confirms that activities such as seeking out pathologists for one-on-one consultation and discussing cases with detectives and other investigators were not the activities for which Walter was compensated. Indeed, Griesemer’s statement that he “always had the feeling [Walter] was striving to search out the facts and achieve a more complete understanding of underlying circumstances and individual causes of death…” contrasts markedly with Walter’s own sworn testimony that he developed profiles in order to “not only help the pathologists and the investigating agencies figure out what happened, but also then towards leads in resolving the case.…” Trans. at 791.

Griesemer’s letter indicates that Walter attended psychological profiles, not that he developed such profiles or that he was expected to develop such profiles in the course of his duties. What is clear is that Walter engaged in the tasks he described at trial only informally and on his own initiative and that he was not employed by the Medical Examiner’s Office to do so. Thus, his trial testimony was false. Furthermore, the Court cannot conclude that Walter was confused or misled by the prosecutor’s question at trial. The prosecutor asked simply, “What did you do for the Medical Examiner’s Office?” The natural response to such question is a description of the work one is paid to perform. From all indications, if Walter had performed only those tasks he described at Drake’s trial, he would not have been performing the job he was apparently hired to do. Despite all evidence—including Walter’s own deposition testimony—demonstrating that one of Walter’s primary responsibilities was working in and maintaining the laboratories, at the Drake trial Walter did not even mention any work in the laboratories. Thus, the Court cannot conclude that Walter’s false testimony in this regard could have been caused by confusion or mistake. Accordingly, for purposes of this motion, the Court will presume that Walter committed perjury with respect to his testimony concerning his work experience in the Medical Examiner’s Office.12

As of this writing, there have been no formal consequences to this expert for his false testimony.

Case Example: Misrepresentation of Multiple Professional Credentials and Affiliations

In Australia, one researcher’s professional misrepresentations have affected the entire community, as he is perhaps the most prolific author of inductive profiling-related material and research to date. A timeline of events is perhaps the best way to demonstrate these misrepresentations.

In 1998, the researcher made an application for employment to Charles Sturt University for the position of "Lecturer Investigations." According to Kocsis v. Charles Sturt University (2001),

Mr. Kocsis stated in the curriculum vitae for the position of Lecturer Investigations at CSU that the expected date of completion of the degree of Doctor of Philosophy he was undertaking was December 1998. Mr. Kocsis has still not yet completed this degree.

As is evidenced by these court filings, the researcher had not received his Ph.D. in 1998, and had not yet received his Ph.D. by May 30 of 2001.

11 Although the statements in the letter were not made under oath, it is appropriate for the court to consider the contents of the letter because it is accompanied by Griesemer’s affidavit affirming that the statements were true when the letter was written in October 1995 and remain true to present.
12 The testimony clearly was false. However, the court declines to hold that Walter committed perjury.
In April of 1998, the researcher published “Analysis of Spatial Patterns in Serial Rape, Arson, and Burglary: The Utility of Circle Theory of Environmental Range for Psychological Profiling,” *Psychiatry, Psychology and Law*, 5(1), April 1998, 195–206, with co-author Harvey J. Irwin. In this peer-reviewed publication, the researcher is described with the following employment information: “Richard N. Kocsis, State Intelligence Group, NSW Police Service.” The New South Wales (NSW) Police Service has not ever employed this individual, as this publication would suggest to any reasonable reader.

Also in April of 1998, the researcher published “Organised and Disorganised Criminal Behaviour Syndromes in Arsonists: A Validation Study of a Psychological Profiling Concept,” *Psychiatry, Psychology and Law*, 5(1), April 1998, 117–131, with co-authors Harvey J. Irwin and Andrew F. Hayes. In this peer-reviewed publication, the researcher is described with the following employment information: “Richard N. Kocsis, Department of Psychology, University of New England and NSW Police Service.” Again, the New South Wales (NSW) Police Service has never employed this person, as this publication would suggest to any reasonable reader.

In November of 1998, the researcher published “The Psychological Profile of Serial Offenders and the Redefinition of the Mismner of Serial Crime,” *Psychiatry, Psychology and Law*, 5(2), November 1998, 197–213, with co-author Harvey J. Irwin. In this peer-reviewed publication, the researcher is described with the following employment information: “Richard N. Kocsis, University of New England and NSW Police Service.” Again, the New South Wales (NSW) Police Service has not ever employed this individual, as this publication would suggest to any reasonable reader.

In January of 1999, the researcher was hired as a lecturer at Charles Sturt University. According to Kocsis v. Charles Sturt University (U no. 21249 of 2000), “Mr Kocsis commenced working as a lecturer at CSU on 25 January 1999.”

On July 22, 1999, the researcher presented the seminar “An Introduction to Psychological Profiling and an Empirical Assessment of Its Accuracy in Assisting Violent Crime Investigations” at the Australian Institute of Criminology. His employment information is provided as “Richard N. Kocsis, Unit Chief, Criminal Profiling Research Unit, Charles Sturt University.” At no time did Charles Sturt University authorize the creation of a “Criminal Profiling Research Unit,” let alone appoint the researcher as its “Director.”

In March 2000, Kocsis published “Expertise in Psychological Profiling: A Comparative Assessment,” *Journal of Interpersonal Violence*, Vol. 15, No. 3, March 2000, 311–331, with co-authors Harvey J. Irwin of University of New England, Australia; Andrew F. Hayes, Dartmouth College; and Ronald Nunn, New South Wales Police Service, Australia. In this peer-reviewed publication, the researcher is described with the following degree and employment information:

Richard N. Kocsis, Ph.D., is a lecturer in violent crime investigation at the NSW Police Academy, Charles Sturt University. He is also the unit chief of the Criminal Profiling Research (C.P.R.) Unit.

Again, at no time did Charles Sturt University authorize the creation of a “Criminal Profiling Research Unit,” let alone appoint the researcher as its “Unit Chief.” Moreover, this individual was never hired as a lecturer at the NSW Police Academy. And finally, he had not yet received his Ph.D.

On November 17, 2000, the researcher was fired/annulled by Charles Sturt University, according to Kocsis v. Charles Sturt University (U no. 21249 of 2000) 2001.

In May of 2001, the researcher was officially awarded a Ph.D. in psychology from the University of New England.

This researcher remains registered as a psychologist with the NSW Psychologists Registration Board, as well as a prolific author on the subject of criminal profiling.
Other examples of unethical conduct in criminal profiling are discussed in Chapter 4, “Forensic Psychology, Forensic Psychiatry, and Criminal Profiling: The Mental Health Professional’s Contribution to Criminal Profiling.”

**SOLUTIONS**

The problems associated with unethical behavior are not unique to the profiling community, nor are the necessary safeguards beyond reach. There must be clear ethical guidelines, there must be practice standards, and these must be understood and enforced. Ethical forensic examiners of every kind have a duty to employ established practice standards and to seek out membership in professional organizations with stern codes of conduct. They also have a duty to shun affiliations that provide neither. Professional organizations have a corresponding duty to provide competent standards of practice, to enforce their codes of ethics, and to educate or expel members who fail with respect to either. Finally, individual professionals have an equally important duty to call attention to inept or unethical practice as they find it. No such practice occurs in the dark, and those who give even tacit approval are a part of the problem.

A necessary step in this direction is the metacognitive ability to recognize inept practice and conduct in oneself and others. The context will not always make it clear, and examiners are commonly rewarded for incompetence and unprofessionalism when their employers’ interests are being served. It is the onus of the individual practitioner to learn and to exemplify the distinguishing philosophy of professional conduct—that one’s first responsibility is to one’s profession and not one’s employer.

In the words of Marcus Aurelius Antoninus, Roman emperor, CE 169–180 (from “The Meditations,” 167 CE), “If it is not right do not do it; if it is not true do not say it.” This must be an absolute, even when threatened, punished, or rewarded. Otherwise, we are unworthy of the trust that we have been given within the criminal justice system.

**SUMMARY**

Most criminal profilers operate outside of a specific or written code of professional ethics. Consequently, many criminal profilers give expert advice and opinions without having to worry about being held responsible for them. This is made apparent by the fact that there are numerous high-profile cases where the unethical conduct of profilers has resulted in harm to the personal life of a citizen. This is most commonly accomplished by an implication of guilt based solely on the public inference that innocent citizens fit the characteristics in a profile.

Criminal profilers are regularly sought out to assist or be affiliated with media-related projects on real or fictional offenders and offenses. Ethical dilemmas arise when a creative consultant position on a fictional project promotes the use of the supernatural, the misrepresentation of the certainty of methodology, or the misrepresentation of case facts for dramatic purposes. The profiler’s involvement in any project can represent a public endorsement of misinformation about the field. In such instances, the profiler must speak up or resign entirely, as he or she is either a source of competent and informed knowledge based on objective forensic practice or serving no valid professional purpose whatsoever.

Professionals must also not abuse their positions of authority by compromising or exploiting subordinates, publishing misleading material or research, or engaging in misrepresentation or fraud.
The problems associated with unethical behavior are not unique to the profiling community, nor are the necessary safeguards beyond reach. There must be clear ethical guidelines, there must be practice standards, and these must be understood and enforced. Ethical forensic examiners of every kind have a duty to employ established practice standards and to seek out membership in professional organizations with stern codes of conduct. They also have a duty to inform the community regarding unethical conduct, to act as a disincentive to those who actively disregard the mandates of ethical professionalism.

Questions
1. True or False: Lying under oath is not necessarily perjury.
2. Give two examples of fraudulent behavior committed by pseudoexperts.
3. Give two examples of fraudulent behavior committed by dissemblers.
4. Give two examples of fraudulent behavior committed by simulators.
5. Explain why comfortainment is unethical.

REFERENCES


