

# A Principles-Based Analysis of Change in Forensic Mental Health Assessment During a Global Pandemic

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The impact of the COVID-19 pandemic has been far-reaching. Among other things, it has forced the reexamination of numerous aspects of professional procedures associated with law, psychiatry, psychology, and the forensic mental health assessments (FMHA) provided for courts and attorneys. In a relatively short period, we have witnessed the rapid spread of the virus, resulting in the public health–driven suspension of legal proceedings and closing of secure correctional facilities to official visitors. Any attempt to consider how forensic psychiatry and forensic psychology will function over the next five years may well be misleading because practice will depend on how quickly we witness the development of effective prevention and treatment of COVID-19.

Nevertheless, it is important to consider the potential implications for research, training, and practice in the field. If we experience an unexpectedly rapid breakthrough and efficient distribution of vaccines or therapeutic agents that effectively allow a return to forensic practice as we knew it prior to January 2020 in the United States, then this editorial will offer only an example of how we might approach

adaptive planning. If the intermediate or most serious potential COVID-19 scenarios eventually occur (e.g., if there are recurring periods of social distancing in response to future exacerbations of the virus), then much of the practice of FMHA will be affected. Likely changes might include the use of videoconferencing technology to conduct evaluations, provide testimony, and meet with attorneys because of limited access to correctional facilities, courthouses, and attorneys' offices during periods of social distancing. There could also be a reconsideration of the purposes and use of incarceration and involuntary hospitalization because of the elevated risk of viral spread as the meaning of public safety is expanded. Finally, the changes made in response to public health concerns will raise myriad implications for research and training as what is "generally accepted" under *Frye*<sup>1</sup> and *Daubert*<sup>2</sup> becomes more difficult to determine given the rapid changes since January 2020.

In this editorial, we consider how the COVID-19 pandemic might affect FMHA. In a recent (but pre-pandemic) survey of forensic experts and legal professionals, the forensic experts expressed some openness to the use of videoconferencing technology in FMHA, although less enthusiasm was observed among legal professionals. Both groups cited challenges that included establishing rapport with evaluatees and technical difficulties associated with videoconferencing; forensic experts also noted concerns that certain measures could not be administered, relevant behavioral data would be lost, and the risk of a confidentiality breach would be heightened.<sup>3</sup> This editorial considers each of these challenges.

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We approach this task by using broad, foundational principles of FMHA that reflect the literature in professional practice, law, research, and ethics that has developed over the past five decades.<sup>4-8</sup> We focus particularly on the updated principles described by Heilbrun and colleagues,<sup>7</sup> which are particularly well suited to this discussion for two reasons: they were developed as foundational principles intended to apply to the full spectrum of FMHA, and they have implications for practice, policy, and research.

The existing principles are listed in the left column of Table 1. We consider how each of these principles might change in a pandemic era of intermediate or severe intensity. First, we note that 25 of the 39 principles have implications for changes or modifications in future FMHA practice, but the remaining 14 principles do not. Thus, we expect that COVID-19 and the associated societal responses have substantial implications for FMHA, but some aspects of FMHA practice will probably not change. In the discussion that follows, we focus on the principles that identify modifications in practice, as summarized in the right column of Table 1. This review begins with generally applicable principles, then moves to several domains in the order in which they occur in a given case: preparation, data collection, data interpretation, written communication, and testimony.

Much of this discussion involves the challenges associated with conducting remote evaluations of individuals who are incarcerated. FMHA is also conducted with individuals who are not incarcerated, of course. Most of the following considerations apply comparably to remotely conducted FMHA for incarcerated and nonincarcerated individuals alike. The most striking difference involves the nature of the evaluation conditions for the evaluatee. Ensuring that conditions are quiet, private, and distraction-free is substantially more challenging for remote evaluations of individuals in juvenile detention, jails, or prisons.

## Generally Applicable Principles

### *Clinical and Forensic Distinctions*

Forensic evaluators need to be aware of the important differences between clinical and forensic domains. The historically well-delineated differences between forensic and therapeutic evaluations (see Heilbrun<sup>6</sup>) may blur in some instances. There are certainly instances of FMHA in which an important aspect of the legal decision involves

treatment and responsiveness; evaluations conducted with juveniles to inform the judge's decision about disposition or transfer are a good example. But courts may reconsider the impact of certain kinds of dispositions when there is elevated risk of contracting COVID-19. Such a reprioritization could take different forms. Forensic evaluators who are medically trained could be asked, as part of evaluations or in testimony, about the assessment and treatment of the virus and the associated risk of contracting it. Risk assessment focused on violent behavior or other criminal offending could shift so that risk would include risk of contracting the coronavirus. Individuals who have contracted or been exposed to coronavirus may present with medical symptoms that are related to the virus itself. They may also present with related behavioral health symptoms, including fear and anger, that stem from our current public health circumstances as well as their preexisting behavioral health symptoms. The larger point is that well-established differences between forensic and clinical practice may no longer distinguish FMHA as clearly following the onset of COVID-19.

### *Appropriate Training*

Appropriate education, training, and experience are required in one's area of forensic specialization. Remotely conducted FMHA will probably become more important in the future, as will the use of telecommunications technology involving videoconferencing, which means that the demand for specialized forensic competence will expand to include skill in the use of videoconferencing platforms (e.g., Zoom, Microsoft Teams) that extends well beyond that necessary to participate in a videoconference call. This demand also will involve logistical and ethics considerations: How will documents be shared? How will responses be recorded and securely archived? How will secure facilities ensure privacy without compromising security for individuals in jails and prisons who need to receive FMHA? For younger professionals who are still in training and more familiar with the use of communications technology in general, this knowledge may be acquired without much difficulty. Individuals who are more senior in the field, however (particularly those who are not proficient in the use of communications technology), may face more substantial challenges in incorporating this expertise into their practice.

**Table 1** Principles of Forensic Mental Health Assessment Adjusted for Pandemic Era<sup>a</sup>

Current Principles ( <i>n</i> = 39)	Principle Adjustments in Pandemic Era ( <i>n</i> = 25)
<b>GENERAL</b>	
Be aware of the important differences between clinical and forensic domains.	Well-accepted differences between these domains may blur in a pandemic era.
Obtain appropriate education, training, and experience in one's area of forensic specialization.	Need to become capable in communication technology in addition to substantive expertise.
Be familiar with the relevant legal, ethics, scientific, and practice literatures pertaining to FMHA.	The literature may change in multiple ways as a function of social distancing.
	Check licensure and other regulations on practice across states, considering state of evaluator and state of evaluatee.
Be guided by honesty and strive for impartiality, actively disclosing the limitations of, as well as the support for, one's opinions.	No change.
Control potential evaluator bias in general through monitoring case selection, continuing education, and consultation with knowledgeable colleagues.	Evaluator perceptions regarding the pandemic may affect recommendations (e.g., placement of individual).
Be familiar with specific aspects of the legal system, particularly communication, discovery, deposition, and testimony.	Add needed familiarity with technology, particularly communications technology.
	Guidance regarding practice may differ between jurisdictions regarding social distancing and remote evaluation.
	Keep current with pandemic-related changes to justice system (e.g., delays, release of minor offenders or pretrial defendants, changing rules at facilities).
	No change.
Do not become adversarial, but present and defend your opinions effectively.	
<b>IN SPECIFIC CASES</b>	
<i>Preparation</i>	
Identify relevant forensic questions.	No change.
Accept referrals only within area of expertise.	Need for content expertise may be expanded to include communications expertise, including how to communicate effectively and securely with remote technology, and the impact of remote vs. in-person communication.
	Possible evaluator bias associated with secure placement in pandemic era.
Decline the referral when evaluator impartiality is unlikely.	Inability to detect subtle behavioral cues over teleconference.
	Possible evaluator bias if remote technology interferes with ability to see relevant aspects of evaluatees' lives.
Clarify the evaluator's role with the attorney.	No change.
Clarify financial arrangements.	There could be changes in some financial costs, particularly with expenses (technology-assisted versus mileage, waiting time).
Obtain appropriate authorization.	There may be changes in authorization involving who is admitted to secure facilities and how.
Avoid playing the dual roles of therapist and forensic evaluator.	No change.
Determine the particular role to be played within forensic assessment if the referral is accepted.	No change.
Select the most appropriate model to guide data gathering, interpretation, and communication.	Model may need revision to incorporate communication during evaluations for remotely conducted FMHA, including how information is communicated (in-person, remotely) and what is communicated (words, behavior, body language).
<i>Data Collection</i>	
Use multiple sources of information for each area being assessed; review the available background information and actively seek important missing elements.	Collateral interviews may more often incorporate videoconferencing.
Use relevance and reliability (validity) as guides for seeking information and selecting data sources.	Psychological testing might be more limited or completely unavailable.
	Major implications: psychological tests, specialized measures, and other structured information-gathering guides will need validation research on remote administration.
	Tests requiring in-person manipulation of materials will not be useful unless adapted for remote administration.
Obtain relevant historical information.	No change.

## Forensic Mental Health Assessment in a Pandemic Era

**Table 1** Continued

Current Principles ( <i>n</i> = 39)	Principle Adjustments in Pandemic Era ( <i>n</i> = 25)
Assess clinical characteristics in relevant, reliable, and valid ways.	See above for using testing. Also consider the scientific evidence on gathering clinical interview information in person versus remotely. Remote may be perceived as less secure. Technological problems (freezing, skipping) may interfere with accurate appraisal.
Assess legally relevant behavior.	Consider the scientific evidence on remote administration of specialized forensic measures, including the perception of its security. Technological problems may interfere with accurate appraisal. Laws guiding some kinds of functional-legal capacity may change (e.g., communicating with and relating to an attorney via remote administration as part of competency-to-stand-trial evaluation).
Ensure that conditions for evaluation are quiet, private, and distraction-free.	Major implications when the evaluator cannot directly observe and appraise these. Access to a private, quiet space and access to remote communication technology will, in part, be a function of the facility. Must consider privacy on both sending and receiving ends.
Provide appropriate notification of purpose and obtain appropriate authorization before beginning.	For evaluatees who are already suspicious or clinically symptomatic, this may not be detected and addressed as effectively via remote evaluation. Some evaluatees may be uncomfortable with or not adept at using the technology, which may result in more refusals due to discomfort with technology.
Determine whether the individual understands the purpose of the evaluation and the associated limits on confidentiality.	Consider how accurately you can determine whether someone does not understand something remotely, particularly when remote IQ/achievement testing may be limited or difficult. Discomfort with technology might be confused with difficulty understanding notification.
<i>Data interpretation</i>	
Use third-party information (TPI) in assessing response style.	No change in need for TPI. TPI may become even more important if remote administration impairs reliability and validity or limits quality and amount of contact with evaluatee.
Use testing when indicated in assessing response style.	Response style testing will need remote administration validation research. Depending on privacy in the facility, defensiveness and uncooperativeness might increase.
Use case-specific (idiographic) evidence in assessing clinical condition, functional abilities, and causal connection.	No change.
Use nomothetic evidence in assessing clinical condition, functional abilities, and causal connection.	Testing norms may not be applicable to remote administration.
Use scientific reasoning in assessing causal connection between clinical condition and functional abilities.	No change.
Carefully consider whether to answer the ultimate legal question. If it is answered, it should be in the context of a thorough evaluation clearly describing data and reasoning, and with the clear recognition that this question is in the domain of the legal decision-maker.	No change.
Describe findings and limits so that they will change little under cross-examination.	Must consider limitations of findings obtained using communication technology for remote administration.
<i>Written communication</i>	
Attribute information to sources.	No change.
Use plain language; avoid technical jargon.	Additional need to explain the communications technology and arrangements for administration. Consider how much you attribute aspects of the evaluatee's responses to the remote vs. in-person setting.
Write report in sections, according to model and procedures.	No change.

Table 1 Continued

Current Principles (n = 39)	Principle Adjustments in Pandemic Era (n = 25)
<p><i>Testimony</i></p> <p>Base testimony on the results of the properly performed FMHA. Prepare. Communicate effectively.</p> <p>Control the message. Strive to obtain, retain, and regain control over the meaning and impact of what is presented in expert testimony.</p>	<p>No change. No change. Communicating clearly and convincingly through a computer screen calls for the development of additional skills. Experts will not have access to some feedback (e.g., others' facial expressions). May be more difficult for both attorneys and experts to use their current strategies toward this purpose in remotely delivered expert testimony. Opens a major line of research, with important implications for training and practice.</p>

<sup>a</sup> Adapted from Heilbrun *et al.*<sup>7</sup> with permission.  
FMHA, Forensic Mental Health Assessment.

**Awareness of Relevant Literature**

Familiarity with the relevant legal, ethics, scientific, and practice literatures pertaining to FMHA is important to forensic practice, but is subject to change. New case law on the use of technology for remotely conducted FMHA will likely develop soon. Applicable ethics guidelines may need revision to address questions such as informed consent, notification of purpose, data security, competence of the evaluator in using remote technology, and whether the particular approaches used are effective. Scientific literature will hopefully expand considerably to include empirical support for various newly developed approaches derived and validated for use in the pandemic era. Practice literature will necessarily evolve to consider, modify, accept, and reject certain current approaches for remote usage. Questions about licensure may be relevant, for example, when the forensic expert is licensed in one jurisdiction and conducts a remote evaluation of an individual who is physically located in a different jurisdiction. Therefore, reviewing the literature in these areas to maintain specialized competence will become even more important than it was before COVID-19.

**Evaluator Bias**

Efforts are made to control potential evaluator bias through monitoring case selection, continuing education, and consultation with knowledgeable colleagues. The present pandemic has powerfully affected the functioning of most aspects of our society and placed many at risk for contracting a virus with a potentially fatal outcome. High-stakes decision-making under conditions of uncertainty is likely to be associated with a host of implicit or

unconscious cognitive biases affecting information processing.<sup>9</sup> For example, it is possible that an evaluator conducting FMHA to evaluate competency to stand trial might be influenced by hospital conditions of elevated COVID-19 risk. Conditions in jail or prison could affect a risk assessment conducted for diversion to a community-based problem-solving court. We suggest that when evaluators consider medical health in their decision-making, they should make this explicit to minimize the impact of this kind of potential cognitive bias.

**Knowledge of the Legal System**

Forensic experts have always needed to be familiar with specific aspects of the legal system, particularly communication, discovery, deposition, and testimony. They will now need to expand their familiarity with various aspects of legal proceedings to include whatever pandemic-era modifications are made to existing processes. These changes may differ across state jurisdictions, with implications for cross-jurisdictional practice. Later we comment on potentially necessary changes to expert testimony that may also arise.

**Preparation in Specific Cases**

**Evaluator's Areas of Expertise**

Evaluators should only accept referrals that are within their areas of expertise. Needed substantive expertise under pandemic-modified circumstances may expand to include technology-assisted remote evaluations and associated changing legal parameters. If these changes are substantial, it will be important to have sufficiently mastered the applicable technology so that the communications experience is as

seamless as possible. If an otherwise experienced evaluator is not competent in the use of technology, possible solutions might include greater reliance on partnerships (e.g., with a colleague or junior colleague in training), an expanded role for information technology consultants in FMHA, and more continuing education focused on technology-assisted evaluation.

### **Evaluators' Impartiality**

At times, referrals must be declined when the evaluator's impartiality is unlikely. Objectivity in FMHA is addressed through ongoing efforts to limit the influence of factors that might interfere with impartiality.<sup>10</sup> Among the additional influences that might emerge in a pandemic era are evaluator reactions to the added health risks associated with incarceration and the loss of certain kinds of information resulting from remote evaluation. Certain aspects of evaluatees' behavior cannot be captured when only part of an individual's body (typically the face and upper torso) are visible on a screen. But another challenge may arise if the evaluator cannot adequately detect more subtle cues relevant to the evaluatee's understanding, empathy, suspiciousness, humor, or other reactions that provide a more accurate behavioral appraisal and promote a better understanding of the person being evaluated. When this source of information is insufficient, it may be important to compensate for its loss by obtaining more third-party information while actively seeking to retain objectivity.

### **Financial Arrangements**

Maintaining clear financial arrangements with retaining parties is a significant aspect of managing forensic practice. Currently established procedures for FMHA billing may change in a pandemic era. Those who now bill for travel and waiting time may spend less time in these activities, but new tasks may emerge that are not presently part of FMHA. For instance, planning to conduct a remote evaluation and related activities to gather supplemental information may affect the overall time billed. These financial costs may be difficult to clarify with requesting parties as the field begins to adjust to pandemic-related FMHA practice changes before common steps and billing areas are established.

### **Authorization of Evaluations**

Forensic experts need to obtain appropriate authorization to conduct FMHAs, either from the court or from the request of an attorney representing the individual to be evaluated.<sup>8</sup> Additional details need to be considered, however, for some FMHAs conducted in the pandemic era: Will a judge's order authorize a forensic expert's admission to a jail or prison that is largely closed to visitors? Will such an order provide a sufficient basis for a secure facility to set up a room to be used for a teleconferenced evaluation? How will jails balance the need for security against the requirement for privacy, while continuing to ensure that the videoconferencing technology is operating appropriately? What are the consequences for a facility failing to respect the privacy of an evaluation? The checklist for remote evaluation preparation will undoubtedly grow as the use of remote evaluation becomes more frequent and these questions are addressed.

### **Models of Forensic Practice**

The most appropriate model should be used to guide data gathering, interpretation, and communication. The model developed by Grisso<sup>11</sup> includes a "context" component that has generally included variables such as the seriousness of the charges, the personal style of the attorney, and the question of whether a criminal defendant will have a trial or agree to a plea bargain. If Grisso's model were used, such context would include the use of remote technology to conduct the evaluation.<sup>11</sup> Remote context is likely to influence the gathering of data, its interpretation, and the communication of findings. Alternatively, the field might develop a different model specifically designed for use with remotely conducted FMHA.

### **Data Collection in Specific Cases**

#### **Sources of Information**

Forensic evaluators use multiple sources of information for each area being assessed, reviewing available background information and actively seeking important missing elements. Within the three broad sources of information for FMHA (i.e., interview, testing and specialized measures, and third-party information including records and collateral interviews), there will likely be modifications related to the

COVID-19 pandemic. (In this context, a specialized forensic measure is a test developed to measure the symptoms, behaviors, and functional-legal capacities associated with a specific legal question.) In particular, we can expect considerable changes related to the clinical interview and third-party information, which can be administered remotely, and related to testing and specialized measures, some of which cannot be administered remotely. Psychological testing and specialized forensic measures are typically developed and standardized using in-person administration. It is unclear whether they would yield meaningful results if administered remotely. Further, forensic experts who administer such measures generally use their observations and brief probes (e.g., “Can you read the first item out loud, please?”) to determine whether a given measure should be used. When these cues are less available, the risk of invalid results increases. The questions associated with remote test administration ultimately will depend on research data and new measures that will not be available to forensic experts for several years. Therefore, forensic experts must proceed cautiously and clearly describe limitations when conducting remotely administered interviews and tests in FMHA.

### **Testing Validity**

Relevance, reliability, and validity are used as guides for seeking information and selecting data sources. Psychological tests and specialized forensic measures can play an important part in FMHA, but these measures may be insufficiently validated for use in remotely conducted evaluations. For example, tests that require individuals to use their hands to draw, write, or manipulate objects may be neither valid nor practical for remote use, eliminating many measures of intellectual and other neuropsychological functioning.

### **Clinical Validity**

Forensic evaluators must assess clinical characteristics in relevant, reliable, and valid ways. Some form of clinical interview is widely used in FMHA. Such interviews may be less effective during the pandemic era when administered remotely, both because of limitations on behavioral observations and due to technical problems, such as freezing, skipping, and sound interference. The scientific evidence on the comparability of in-person versus remote evaluations will be important in deciding which in-person

procedures to retain in remotely administered evaluations. It is also unclear whether evaluatees who would otherwise be seen in person while detained will be as willing to engage with forensic evaluators when there is a risk for contracting COVID-19 in that facility. One possibility is that FMHA could be perceived as facilitating release from the facility, which might actually increase willingness to participate but could affect response style by emphasizing self-report that is consistent with release. On the other hand, the opposite may occur; depending on the circumstances to which the individual would be released, some may have fears about living in a pandemic-era community that would affect their willingness to participate or the accuracy of their self-report. In addition, a remotely administered evaluation may be perceived as less secure. The reliable and valid appraisal of clinical characteristics is hence likely to be limited in certain foreseeable ways (such as absence of certain tests and measures and technical problems with accurate depiction of the evaluatee in remotely conducted evaluations) and in other ways we cannot yet anticipate.

### **Assessing Legally Relevant Behavior**

In addition to challenges related to assessing clinical characteristics, there may be comparable difficulties in assessing functional-legal capacities in a pandemic era. Such capacities are typically appraised through questioning during interviews, specialized forensic measures, third-party interviews, and collateral documents. The difficulties in using remotely administered interviews and specialized forensic measures to appraise legally relevant behavior may limit their applicability. Fortunately, the review of collateral documents and administration of third-party interviews (at least when they are conducted by telephone) should not be affected in the same way. The other complicating consideration involves any changes to relevant functional-legal capacities resulting from adaptation in legal practice or changes in the law. For example, if an individual’s capacity to work remotely with counsel is limited, that may affect the assessment of ability to assist counsel as part of trial competency.

### **Evaluation Conditions**

Evaluators work to ensure that conditions for evaluation are quiet, private, and distraction-free. When conducting FMHAs remotely, the forensic expert has limited ability to observe and control the conditions

experienced by the evaluatee. Forensic experts likely have an increased interest in current and future remote access to detained individuals. This interest may provide an incentive to juvenile and adult correctional facilities to develop space that is secure but also quiet and free of distractions. Additionally, they must resolve the difficult problem of privacy, balanced against the need for technical support to ensure that the communication technology works reasonably well and is used appropriately by the evaluatee (e.g., individuals confined in a secure facility could not be left unsupervised with hardware that would allow Internet access). Additional questions may arise as well: How much such space will be available? For how long can it be reserved? For how long can hardware be reserved for purposes of forensic evaluation, as opposed to clinical or other purposes? Will evaluatees maintain attention and concentration during remote evaluations in a manner that approaches that observed in evaluations conducted in person?

### **Notice and Authorization**

Making appropriate notification of purpose and obtaining appropriate authorization is required before beginning an evaluation. Obtaining informed consent for evaluations requested by the litigant's attorney, or obtaining the evaluatee's agreement to proceed following notification of purpose in court-ordered cases, is a necessary step in FMHAs. Difficulty in establishing a working relationship and evaluatee suspicion of remote technology could exacerbate difficulties at this stage. Some potential evaluatees may be uncomfortable with remote technology, for reasons including privacy, unfamiliarity, and the potential for exacerbation of preexisting suspiciousness. (Telephone contact is likely to be more familiar but less informative, so the tradeoff must be considered.) Both of these problems would need to be resolved because conducting an evaluation without this step violates ethics concerns and is inconsistent with good forensic practice.

### **Evaluatee's Understanding of Interview**

Forensic practitioners are trained to determine whether the evaluatee understands the purpose of the evaluation and the associated limits on confidentiality. The second part of this authorization step involves assessing whether or not the evaluatee understands the information that has been provided about the nature of the evaluation, how it was authorized or requested, the purpose(s) for which it can be used, the limits on

confidentiality, and the evaluator's role. Such understanding can be assessed by asking that each of these elements be repeated or explained. When evaluatees experience substantial limitations in their cognitive functioning or reality testing, those limitations can interfere with understanding the purpose and nature of the evaluation. Evaluating such limitations, particularly in intellectual functioning, cannot be done as accurately without administering certain measures such as formal IQ tests. Thus, the forensic expert cannot describe as precisely why an evaluatee might not understand this initial information. There is also the question of whether some of the apparent lack of understanding might reflect discomfort with the technology, which is something that would be more straightforward to answer in person. Any written material used as part of the authorization process might need to be revised for clarity and so that it can be read on a screen. If the evaluatee's signature is part of this process, there will be the additional question of how the signature is obtained remotely.

### **Data Interpretation in Specific Cases**

Interpretations made using findings from remotely conducted FMHA will necessarily involve more caution. We have identified various challenges to accuracy that might arise. How findings are interpreted will depend on our confidence in their reliability and validity. Until we know more about the impact of limits on rapport, technical problems, missing measures, limits on behavioral observations, and concerns about confidentiality, it will be necessary to be particularly careful. Though increased use of qualifying language may produce opinions that are less convincing, such adjustments will likely be required until the field adapts to and manages these challenges effectively. Peremptory caution in the interpretation of findings also anticipates that uncited limitations will not be unexpectedly presented on cross-examination.

### **Written Communication in Specific Cases**

Forensic report writers are advised to use plain language and to avoid technical jargon. In describing cautions in the report, it may be necessary to include specialized information about telecommunications technology in addition to the substantive forensic specialty content. The telecommunications technology should be sufficiently well understood so that it can be described using language that is clear to

others, even those who are unfamiliar with it. For instance, the question of the comparability of remote results to what would have been obtained in person should be anticipated and addressed using clear, non-technical language.

## Testimony in Specific Cases

### Communicate Effectively

There are at least two ways in which expert forensic testimony may change in the pandemic era: when it is delivered remotely, and when it is delivered in person but describing an evaluation that has been conducted remotely. We have discussed different ways in which the FMHA, the foundation for expert testimony, may change. Those changes will certainly affect the substance of in-person expert testimony. The process of remotely delivered expert testimony also has its challenges. Communicating clearly and convincingly while looking into a computer screen rather than viewing a courtroom from the witness stand calls for the development of additional skills. The combination of remote technology with adversarial proceedings, without access to the feedback that experienced experts have come to use (e.g., others' facial expressions, the amount of information on the table of a cross-examining attorney), means that a once-familiar process will be less so. These differences may be disconcerting, particularly to those who are skilled forensic experts, but they can certainly be mastered as experts become more comfortable with the use of remote technology in adversarial proceedings.

### Control the Message

Forensic experts strive to obtain, retain, and regain control over the meaning and impact of what is presented in their testimony. This principle is a specific example of how expert witness skills will need a certain adaptation when the testimony is delivered remotely. Experienced experts can anticipate periods of expert testimony during which they "flow," communicating clearly and in a controlled way. There are other times when they are asked something that is unexpected, or something else occurs to interrupt their rhythm in providing testimony. They have developed strategies to regain control and comfortable communication when they

have lost it. These strategies may not be comparably effective when testimony is delivered remotely, particularly when the expert cannot incorporate the cues provided by others in the courtroom. There is a brief lag time associated with verbal exchanges through telecommunications technology, for example, that could result in brief continued testimony following an objection. Being attentive to this lag time might make a witness more self-conscious than usual, with difficulty establishing the usual rhythm in testimony.

## Conclusion

The impact of the present pandemic era will be experienced across a wide swath of our society, including the practice of forensic psychiatry and forensic psychology. It is important for our respective disciplines to consider how these changes might affect the provision of forensic evaluations to courts and attorneys. Adapting the practice of FMHAs and managing the challenges of COVID-19 will facilitate the continued excellence to which we strive as forensic specialists.

## References

1. Frye v. United States, 293 F. 1013 (D.C. Cir. 1923)
2. Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993)
3. Batastini A, Pike M, Thoen M, et al: Perceptions and use of videoconferencing in forensic mental health assessments: a survey of evaluators and legal personnel. *Psychol Crime & L*, published online December 23, 2019. Available at: <https://doi.org/10.1080/1068316X.2019.1708355>. Accessed May 26, 2020
4. Textbook of Forensic Psychiatry. Edited by Gold L, Frierson R. Arlington, VA: American Psychiatry Association Publishing, 2018
5. Gutheil T, Appelbaum P: *Clinical Handbook of Psychiatry and the Law*, Fourth Edition. Philadelphia: Wolters Kluwer, 2020
6. Heilbrun K: *Principles of Forensic Mental Health Assessment*. New York: Kluwer Academic/Plenum Press, 2001
7. Heilbrun K, Grisso T, Goldstein A: *Foundations of Forensic Mental Health Assessment*. New York: Oxford University Press, 2009
8. Melton G, Petrila J, Poythress N, et al: *Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers*, Fourth Edition. New York: Guilford, 2018
9. Kahneman D: *Thinking, Fast and Slow*. New York: Farrar, Straus, and Giroux, 2011
10. American Academy of Psychiatry and the Law: *Ethics guidelines for the practice of forensic psychiatry*, 2005. Available at: <https://www.aapl.org/docs/pdf/ethicsgdlns.pdf>. Accessed May 11, 2020
11. Grisso T: *Evaluating Competencies: Forensic Assessments and Instruments*, Second Edition. New York: Kluwer Academic/Plenum, 2003