

Rostow, C. D., & Davis, R. D. (2004). *A Handbook for Psychological Fitness-for-Duty Evaluations in Law Enforcement*. New York: The Haworth Clinical Practice Press. 320 pages.

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I came across “A Handbook for Psychological Fitness-for-Duty Evaluations in Law Enforcement,” written by Drs. Rostow and Davis, who have a history of working in the field of police psychology and who offer an excellent guide for a specialized area of forensic psychology. In “Fitness-for-Duty Evaluations in Law Enforcement,” the authors provide forensic mental-health professionals with a solid background of the history of American policing, followed by police culture, relevant assessment and therapy issues with this population, law-enforcement liability concerns, and relevant case law. The authors then discuss the mechanics of a fitness-for-duty evaluation, including methods and procedures, and fitness-for-duty report writing recommendations.

The authors define police psychology as the application of science and techniques of the discipline in the profession of psychology to law-enforcement issues and problems. Their objective of the book is to bridge the gap between the worlds of the police executive (law-enforcement administration) and the police psychologist, by offering understandable concepts and vocabulary that would provide the reader (often administrators) with insights into the utility and methods of the fitness-for-duty evaluation (FFDE). The authors aim to provide a synopsis of issues that law-enforcement executives face pertaining to fitness and performance of their staff while recognizing the professionalization of police psychology as an independent and unique discipline.

In section one, Rostow and Davis discuss the history and development of police psychology. For many forensic psychologists performing FFDEs, a brief read of the history of law-enforcement agencies and police psychology would suffice. The authors note that intellectual and neuropsychological testing currently is a controversial area of police selection. Intelligence tests have been used by some departments to exclude intelligent applicants under the theory that they would not be content with police work. Another potential problem is that traditional IQ testing yields scores that tend to be higher for European and Asian applicants than for ethnic minorities, for example, and ultimately the testing may result in a discriminatory impact on the applicant. The history of police psychology offers a sketch into the development of psychological testing over time. By the 1960s, most police psychologists appear to have been active in training, disciplinary methods, and other related issues, with little effort afforded to developing scientific interview and testing methods to use with offers in selection or FFDEs. With insufficiently developed psychological testing, little optimism or utility was seen for most

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police psychology selection procedures by the early 1990s. The authors acknowledge that most reviews of police research literature have focused on the usefulness of administrative methods such as supervision techniques over individual-officer psychological approaches. When considering the future of police psychology, psychologists may expect to play a more important and developing role regarding the development of standards of deadly force for police officers. Similarly, psychologists may be able to assist in the understanding of a specific use-of-force incident relevant to an officer's FFDE.

The authors then provide a helpful chapter discussing police culture and its importance regarding the assessment and treatment of law-enforcement clients. The authors note that a major source of distress for officers is the idea that if they talk to a police psychologist they may be ridiculed or rejected by their peers and supervisors as either "damaged goods" or a "nutcase." Many officers will resist suggestions to seek mental-health assessment or treatment no matter how serious their problems are. When considering special issues of psychotherapy in police settings, posttraumatic stress disorder and acute stress disorder are common psychiatric conditions.

The authors take serious concern with cultural diversity and its relevance to developing teamwork in police operations and in designing a stress-management program to treat officers with individual difficulties. The authors also are sensitive in distinguishing officers who come from a variety of backgrounds and neighborhoods with various racial compositions that can affect their relationship with peers and how they handle their job. The authors also describe internal police cultural issues such as police officers tending to be more conservative than the general populations that they serve. Officers may have hostility to the judicial system and resent legal technicalities such as Miranda warnings, which they may perceive, are used as tools to restrain or punish them in their pursuit of protecting society. This same hostility obviously may be felt against the FFD provider, as officers feel threatened by the police department's request for a psychological assessment addressing their fitness to serve and protect. Similarly, many officers have a sense of "hyper masculinity" which may conflict with the perception of mental-health assessment and treatment. The authors comment that many street officers have developed prejudicial attitudes towards minorities and these attitudes stem from both their work with colleagues and direct experiences of police work and, as a consequence, many view everyone with skepticism and suspiciousness.

The FFD examiner obviously has to take these perceived attitudes into account during the evaluation and appreciate that the officers' characteristics are often rooted in experience rather than simple personality traits. The FFD evaluator must also appreciate that officers may desire the unpredictability, uncertainty, and seduction of policing and the power that comes on the job. The authors do a good job in introducing the value system of law enforcement and the toll that policing takes on an individual and his family.

The next section in the book describes law-enforcement liability and police psychology. Rostow and Davis focus on civil rights regarding conduct of police officers. The authors offer case law regarding civil rights violations in law enforcement. There is an emphasis

on accountability of disciplining officers for misconduct as in the Rodney King case or respecting the freedom of police officers to decide to act or refrain from acting with their own professional discretion. The authors also address a case in which a plaintiff civilian claimed a civil-rights violation at the hands of an officer, and the issue of forensic psychological testimony regarding whether the officer had been properly trained, selected, or supervised. Such testimony may be required when an officer who is deemed unfit for duty by an FFDE later challenges that finding in court as a violation of his employment rights. In these cases the allowable testimony of the FFDE provider may be critical and it is desirable that the police psychologist or expert witness develop conclusions in a manner that is consistent with the federal rules of evidence, FRE 702, and related case law such as ***Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993***.

Before performing a FFDE, the psychologist should have a solid grasp of the reasons law-enforcement agencies make these referrals. The authors do a good job in describing appropriate reasons for FFDEs including but not limited to the following factors:

- 1) allegations of excessive and inappropriate and unexplained use of force;
- 2) emergence of prejudicial or overbearing written or spoken conduct or behavior;
- 3) threats or insinuations of violence;
- 4) medical conditions characterized by reports of debilitating physical complaints that are not detected in standard medical examinations;
- 5) complaints by family, relatives or friends, or associates of threatening or bizarre off-duty behavior;
- 6) signs of emotional instability present following a shooting incident or traumatic job-related incident; and/or
- 7) sexual inappropriateness or acting out especially concerning unwanted sexual advances or implications of a misuse of authority.

For the expert witness who wants a “nuts and bolts” tutorial on how to conduct forensic evaluations pertaining to FFD, Rostow and Davis offer several rich chapters. They first start out with the nature, purpose, mechanics, and methodology of the FFDE. Initially the police department has a duty to determine that an officer does not pose a significant risk of injury to others and that he is capable of performing his duties with customary care and consciousness. The authors acknowledge that FFDEs are often poorly understood by police executives and mental-health professionals who are not police psychologists. They describe the FFDE as a specialized mental-health examination designed to inform the law-enforcement executive and department responsible for the officer's supervision of issues of mental impairment that may affect the ability of the officer to perform his duty in a safe and effective manner. The authors describe the FFDE, in part, as an important part of a risk-assessment evaluation. Specifically, *positive risk* is the assessment of what the officer may do that is potentially damaging, such as threats of harm against others, racist or sexist conduct, and aggression, whereas *negative risk* is what the officer may neglect to do such as distractibility because of substance abuse, rejection of supervision, or dereliction of duty. The authors recognize that many psychologists do not have a police psychology background and may not understand or have been exposed to customary officer conduct, and note that common

officer behaviors may be misunderstood as serious mental illness or personality disorders, which misunderstanding could lead to inappropriate recommendations.

Throughout the evaluation process, the authors clearly describe the importance of communicating the limits of confidentiality to the examinee, that the FFDE must be based on sound administrative and scientific rationales, and that it must fit into other department administrative procedures. When the FFDE provider is an outside consultant, the contract between the provider and the agency must clearly identify the department as the provider's legal client and not the legal client of the officers who are examined by the provider. Further, a pre-established agreement concerning the nature of observations and complaints that will be covered in the FFDE must be established by all parties before the evaluation. When considering the goal of the FFDE, referrals should be made for specific current problems that are connected with officer behavior and which are recorded from observations by colleagues or civilians. In general, this is similar to other forensic psychological evaluations in that the expert must have a clear understanding of the referral question and communication with the referral agency before any evaluation. Similar to other forensic psychological evaluations, the authors also suggest that a treatment provider to the officer should not be a forensic examiner in an FFDE due to a conflict of interest.

Throughout the book, Rostow and Davis emphasize what they call the "minimum necessary rule." The only information that should be included in the FFDE report is information that has job-related significance, such as facts related to substance abuse or risk of violence, but not other information that is sensitive to the officer's background and which is irrelevant to the referral question. As in other forensic psychological and neuropsychological evaluations, the authors suggest that there should be no third-party observations during the examination because the presence of other parties may distort or alter interactions needed by the psychologist to provide a meaningful evaluation and recommendations. As in other forensic psychological evaluations, the courts have held that psychological reports may not be attacked legally from the perspective of defamation.

After the authors describe styles for FFDEs, they turn to specific methods and procedures. As in other forensic evaluations, the examiner should explain to the examinee the nature and purpose of the psychological assessment instruments used and again limit the forensic report to only relevant fitness-related information. In essence, the authors suggest that the FFDE report in written form should be consultative in nature to the law-enforcement executive or agency without including diagnosis or embarrassing detail.

When considering the usefulness of psychological testing, the authors describe the advantages and disadvantages of assessment protocols and focus on the commonplace practice of using objective psychological personality testing while providing brief descriptions of the MMPI-2, the PAI, and the Inwald Personality Inventory, for example. They add that cognitive, intellectual, and neuropsychological testing may be employed in FFDEs if called for by the circumstances of the referral or the reported symptoms or behaviors of the officer. The authors also add that psychologists must be alert to the

particular manner in which a given test was normed and standardized. For example, one of the questions concerning the utility of a test is whether there is an inclusion of police-officer norms and the degree to which the standardization group is similar to that of the current department. The authors also note the concern, as in many forensic assessments, of predictive validity of psychological testing. They assert that not many tests offer good predictive validity for later events or behaviors by a particular police officer. Similar to other forensic psychological evaluations, the goal of the FFDE is not just to come up with a diagnosis but rather to determine the likelihood that the officer presents a mentally or emotionally based danger to the employer or other persons by active misconduct or inability to perform the job.

In addition to the assessment of mental-health and personality disorder issues, recommendations are very important. The authors describe four conclusions of a fitness-for-duty evaluation including:

- 1) unfit;
- 2) unfit but treatable;
- 3) no discernible mental health problems; or
- 4) invalid presentations.

The recommendations section should contain a clear opinion of whether the officer is deemed presently fit for unrestricted law-enforcement duty, fit for duty with optional time-limited accommodations, temporarily unfit for duty pending a proposed intervention, or unfit for duty with the likelihood of remediation.

In some cases, the officer is found unfit but treatable and after treatment, he will be recommended to have a post treatment re-evaluation, which is another type of FFDE. After producing a report, as in other forensic psychological evaluations, the release of records to third parties should be limited and it is advisable to share FFDE reports only within the limited circle such as the law-enforcement agency, lawyers involved, and the civil service board.

The authors offer a chapter on confidentiality of psychological information and the HIPAA in police psychology. The FFDE provider has the ethical responsibility to serve the public interest and evaluate the officer from a viewpoint of professional law-enforcement standards of conduct. In contrast, a treating police psychologist must have a working knowledge of police psychology, but is a clinical provider who has a functioning doctor-patient relationship with the officer and not a forensic examiner. As in other psychological assessment and treatment relationships, issues of confidentiality, consent by the person in treatment, disclosure to the client, and disclosure to law-enforcement agencies are factors to be considered. The authors note that many police officers have alcohol and drug-abuse issues and they discuss alcohol and drug-abuse confidentiality laws. They describe HIPAA in police psychological evaluations as affecting the collection of information about the mental-health treatment of officers before and following an FFDE and point out a need to clarify the FFDE provider's position as other than a covered entity. While patients normally have access to their medical records, in most FFDEs HIPAA regulations provide that "Patients do not have the right of access to

information compiled in a reasonable anticipation of, or of use in, civil, criminal, or administrative action or procedure." Similarly, psychotherapy notes are held to a higher standard of protection because they are not part of the medical record.

The authors add a chapter on the Americans with Disabilities Act and FFDEs. Because FFDEs integrate elements of medical and psychiatric functioning, the FFDE provider will be exposed to federal laws that concern a relationship between the labor and civil rights regulations and medical conditions.

The authors wrap up their book with appendices that are very helpful in providing FFDE guidelines. They note that qualifications for an FFDE should be a mental-health professional who is licensed, who possesses training and background in psychological test interpretation and law-enforcement psychological assessment techniques, and who has familiarity with the literature in police psychology and the central job functions of a peace officer. The thoughtful reader may also wish to consult further resources provided by the International Association of Chiefs of Police (IACP). IACP provides relevant research and guidelines pertaining to pre-employment psychological evaluation services and psychological FFDEs.

As in other forensic psychological evaluations, the authors emphasize the importance of developing collateral information regarding the officer such as his history of conduct (in writing or on video), commendations, testimonials, internal affairs investigations, pre-employment psychological screening, citizen/public complaints, use-of-force incidences, disciplinary infractions, incident reports of triggering events, etc. Finally, the authors include an evaluation letter of guidance, which is a letter to be sent to law-enforcement executives for the purpose of guidance and instruction to them following a referral. They also offer a FFD letter for an officer to report for examination and a sample FFDE report.

In summary, Drs. Rostow and Davis offer an excellent resource for mental-health professionals who desire to become police psychologists or participate in consultative and expert roles in evaluating FFD cases.