



Whitepapers, Inc.

1433 Reports Lane, Little Rock, AR
P: (501) 224-7373 F: (501) 224-7372
www.whitepapersinc.com

Green Paper

Including Criminal Profiling in Investigations

1. Introduction

a. Definition

Criminal profiling is also known as criminal investigative analysis, investigative psychology, offender profiling, psychological profiling, profiling, behavioral profiling, criminal personality profiling, sociopsychological profiling, or criminological profiling.¹ According to Devry, “criminal profiling describes a process that attempts to identify characteristics of an unknown offender, through a detailed examination of the crime scene and victim characteristics, informed by information about prior similar cases.”² The FBI says that “behavioral science is all about better understanding criminals and terrorists -- who they are, how they think, why they do what they do – as a means to help solve crimes and prevent attacks.”³ Former FBI profiler McCrary defines criminal profiling as “a process used to analyze a specific crime or series of crimes in order to develop a behavioral composite of an unknown offender.” (p. 9)⁴ Professor Canter, world-leading crime psychologist, says that “‘offender profiling’ is taken to be the derivation of inferences about a criminal from aspects of the crime(s) he or she has committed.” (p. 23)⁵ All of these infer that criminal profiling determines the criminal’s psychological status from investigation of crime scenes and victims. Offenses in which criminal profiling is often used include arson, burglary, rape, and murder.

b. History

Criminal profiling dates back to the 1870s in Italy with Cesare Lombrosa, who was the founder of the Italian School of Positivist Criminology. He first theorized that “criminals are distinguished from non-criminals by multiple physical anomalies.” For years, Lombrosa studied criminals in post-mortem examinations, and he was in charge of an insane asylum.⁶

The best known early example of criminal profiling was conducted by Dr. Thomas Bond in 1888 on the notorious Jack-the-Ripper case. Dr. Bond was a registered police surgeon who studied medical and police reports and did post-mortems on the victims to form an opinion about the offender.⁷

Walter Langer, a psychiatrist based in New York, NY, also figures in the history of criminal profiling. He was hired in 1943 by the US Office of Strategy Services to provide a profile of Adolf Hitler, stating that they wanted “a realistic appraisal of the German situation. If Hitler is running the show, what kind of person is he? What are his ambitions? We want to know about his psychological make-up – the things that make him tick. In addition, we ought to know what he might do if things began to go against him.” (pp. 38-39) Langer’s profile has been largely accepted as accurate.⁸

¹ For the purpose of this paper we will use the term criminal profiling.

² Devry, C. (2010). Criminal Profiling and Criminal Investigation. *Journal of Contemporary Criminal Justice*, 26, 393-409. Retrieved from <http://ccj.sagepub.com/content/26/4/393>

³ The Federal Bureau of Investigation. (nd). Behavioral Science. Retrieved from www.fbi.gov/about-us/training/bsu

⁴ McCrary, G.O., Ramsland, K. (2003). *The Unknown Darkness*. New York, NY: HarperCollings Publishers, Inc.

⁵ Canter, D. (2004). Offender Profiling and Investigative Psychology. *Journal of Investigative Psychology and Offender Profiling*. 1, 1-15. Retrieved from www.interscience.wiley.com/doi/10.1002/jip.7/pdf

⁶ (nd). Cesare Lombrosa. Retrieved from www.en.wikipedia.org/wiki/cesare_lombrosa

⁷ (nd). Offender Profiling. Retrieved from http://en.wikipedia.org/wiki/criminal_profiling

⁸ Evisike, N. (2007, October 1). *The Use of Offender Profiling Evidence in Criminal Cases*. (Dissertation). Retrieved from <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1023&context=theses>

Next in notable figures in criminal profiling is Dr. James A. Brussel, a psychiatrist and New York, NY's Assistant Commissioner of Mental Hygiene. He assisted the New York police in profiling from 1957-1972. In 1956 he was asked by the New York City police to help investigate a series of bombings that had occurred between 1940 and 1956. When the investigators used Brussel's profile, it led them to the bomber, who had been accurately profiled down to what clothes he wore. Brussel is also known for helping capture the serial sex murderer known as the Boston Strangler.⁹

It wasn't until the 1970s that criminal profiling became an organized practice. The FBI established the Behavioral Science Unit in 1974. They "designed a method for analyzing unknown offenders in unsolved cases" with the idea to "look at the behavioral manifestations at a crime scene for evidence of mental disorders and other personality traits, thus aiding the detectives 'deductive reasoning.'" Originally, the FBI relied heavily on interviews they conducted on thirty-six convicted killers and forty-one convicted serial rapists which led to the creation of the Crime Classification Manual. This manual was "a classification system for the types of crimes in which the behavior of the perpetrator plays an important role." (p. 50)¹⁰

David Canter is hailed as the "father of offender profiling in Brittan."(p. 54)¹¹ Police initially asked Professor of Psychology David Canter to assist in a case involving a series of rapes and murders. Using his profile, the police were able to locate a suspect and then use the information to trap the offender. Canter's profile proved very accurate.¹²

Criminal profiling has had a long history covering a variety of uses and methods. Except with the Jack-the-Ripper case, criminal profiling seems to indicate a history of success, but we may never know how many cases were actually helped or hurt by its use.

2. Profilers

Since the 1870s with Dr. Lombrosa, criminal profilers have consisted of psychiatrists, psychologists, professional investigators, and people who have studied in varying degrees of coursework. As of today, the FBI Behavioral Unit consists of "supervisory special agents and veteran police officers with advanced degrees in the behavioral science disciplines of psychology, criminology, sociology, and conflict resolution. The unit also includes a criminologist, clinical psychologist, research/crime analysts, and management analyst."¹³ Other psychologists, such as David Canter, have become "expert" in the field.

Despite shows like Criminal Minds or Thomas Harris' series of books about criminal profiling that portray criminal profiling as very accurate, there is some question as to how reliable it actually is considering the people who actually do the profiling. The FBI Behavioral Unit relies heavily on past experience and the Classification Manual previously mentioned. This Classification Manual was originally developed by people who did not hold degrees in psychology. McCrary notes that "you'll even find people offering accelerated weekend seminars that promise certification as a profiler who

⁹ (nd). Offender Profiling. Retrieved from http://en.wikipedia.org/wiki/james_brussel#James_A._Brussel

¹⁰ See *id.* at 8

¹¹ See *id.* at 8

¹² See *id.* at 8

¹³ See *id.* at 3

can consult with law enforcement agencies.” (p. 12)¹⁴ Many police investigators are employing criminal profiling because “they feel the need to invent a narrative that makes sense of all the facts and also indicates the psychological process that give the plot ‘its dynamics.’”¹⁵ There is also disagreement between profilers on methodology and accuracy of profiling. According to McCrary, “behavior analysis within the context of a crime requires an in-depth education in both psychology and law enforcement.” (p. 12)¹⁶

Profiling cases referred to in the introduction to this document indicate the accuracy of early profilers, but it does not also show the many failures of crime profiling. Original FBI profiler studies conducted by John Douglas and Bob Ressler, who were not trained psychologists, were not accomplished in a scientific manner. According to D.M. Risinger and J.L. Loop as cited by Devry, their interviews, which form the basis for FBI profiling today, “did not appear to be conducted on the basis of a defined interview schedule or result in the compilation of formal notes or records of these interviews.”¹⁷ In Douglas’ own words “the program was informal and aimed at ‘letting us see the way the offender’s mind worked, getting a feel for them, allowing us to start walking in their shoes.’”¹⁸ There was not a control group and B. Turvey, as cited by Devry, wonders about the consistency of information to be found among serial killers and rapists who could have suffered from a range of mental illnesses and who would be unreliable and likely to lie about their histories and activities.¹⁹

Well-respected investigator McCrary says that “psychology has made a significant contribution to law enforcement” (p. 20), but that “no agent mistakes criminal profiling for an established science.”(p. 21)²⁰ McCrary goes on to say that “a profile is the end result of interpretation, which is based on the interpreter’s experience and knowledge... Not everyone will interpret the clues in the same manner.” (p. 21)²¹ Criminal profiling is subject to the training and experience each individual profiler has had. This does not help the need for objectivity. The American Psychological Association reported on studies done in 1990 by Anthony Pinizzotto, PhD and published in *Law and Human Behavior*, that the majority of trained profilers fared better in rape cases in detailing a profile, but they didn’t do any better in murder cases than by a non-profiler.²² The same article reported on a 2003 study done by Richard Kocsis, PhD, published in the *International Journal of Offender Therapy and Comparative Criminology*. In this study the “professional profilers made more correct predictions about the offenders than any other group. But they weren’t uniformly good at their jobs – they also”²³ Canter wrote that “very few police officers have any training in the concepts of science. Most know little of the need to test alternative thought processes that can distort objectivity.”²³ Canter realizes the problems of criminal profiling as it is fictionalized on television and in books and by the FBI for its

¹⁴ See *id.* at 4

¹⁵ Canter, D. (1998). Profiling as Poison. *Centre for Investigative Psychology*. 2, 10-11. Retrieved from http://www.i-psy.com/publications/article_poison.php

¹⁶ See *id.* at 4

¹⁷ See *id.* at 2

¹⁸ See *id.* at 2

¹⁹ See *id.* at 2

²⁰ See *id.* at 4

²¹ See *id.* at 4

²² (2004 July) Does Profiling Really Work? *American Psychological Association Journal*. 35(7). Retrieved from www.apa.org/monitor/julaug04/profiling.aspx

²³ See *id.* at 15

scientific nature and dearth of appropriate information. He also believes that “psychologists have much to offer to criminal, and other, investigations.”²⁴

Question 1: What kind of experience is necessary to be a reliable criminal profiler?

Question 2: Is criminal profiling a science or pseudoscience?

Question 3: Is there reliable information on which profilers can base their profiles?

3. Legal Implications

Another issue to address is the legal implications and ramifications of criminal profiling. It has already been determined that criminal profiling is not always accurate, but it might still be useful in investigating a variety of crimes. In an outline of memorandum in law that the Terri Wood Law Office issued concerning “Admissibility of ‘Criminal Profiling’ Evidence,” they argued that “profiling is one tool among many like blood-splatter interpretation or wound pattern analysis that can be successfully applied by a trained investigator.”²⁵ They go on to say that profiling could either produce reasonable suspicion or reasonable doubt.

In several cases, the testimony of criminal profiling has been excluded. In Oregon²⁶, though the detective giving the testimony had sixteen years experience as a homicide detective and had trained in the FBI as a criminal investigative analyst, “the judge excluded his testimony because ‘he found it to be of scant relevance to (the) case’ such that it would not assist the jury and further found that some of Gebo’s²⁷ testimony involved matters about which he was not shown to be qualified to give expert opinion.”²⁸ In *State v. Lowe* 599 NE2d 783 (Ohio app. 3 Dist. 1991), Douglas’ testimony was suppressed because the court decided that Douglas was not an expert in the field of psychology to give psychological evaluation of crimes.²⁹ Douglas had a master’s degree in educational psychology with an emphasis on counseling and had used the crime-investigative analysis in over 5,000 cases. During that trial, Douglas “conceded that none of his testimony could be stated to a reasonable scientific certainty.”³⁰ Appellate court agreed with the trial court’s findings.

In other cases, the testimony of a criminal profiler was considered as expert testimony and therefore included in the prosecution. In *State v. Code*, 627 So. 2d 1373 (La. 1993) Douglas, the FBI behavior analyst mentioned before, gave testimony on the modus operandi and ritual aspects of the defendant that was accepted as evidence. In *State v. Russell*, 882 P2d 747 (Wash. 1994) because Douglas was considered an expert witness, he was able to provide testimony to be included as part of the defense. His opinion was that all three murders were committed by the same person. Terri

²⁴ See *id.* at 15

²⁵ (nd). Outline of Memorandum of Law on Admissibility of “Criminal Profile” Evidence. Retrieved from www.terriwoodlawoffice.com/pdfdocs/Criminal_Profile_Evidence.pdf

²⁶ Oregon (*State v. Dunn*, Lane Co. Circuit Court)

²⁷ FBI-trained profiler, Sgt. Gebo

²⁸ See *id.* At 26

²⁹ See *id.* At 26

³⁰ See *id.* at 26

Wood Law Office cited the US v Gil, 58 F3d 1414 (9th Cir. 1995) in having allowed criminal profiling testimony as “specialized knowledge of human behavior patterns characteristic of” particular criminal activity.³¹ According to the Terri Law Wood Office, the profiler is able to “illuminate physical evidence, and offender behavior, in a way that allows jurors to understand all of the available evidence in a case so as to arrive at a fully informed determination of guilt or innocence of the accused.”³²

In the case of Daubert v Merrell Dow Pharmaceuticals (1993), as cited in the Journal of Urban and Contemporary Law, the Supreme Court determined that

“the reliability of admissible expert testimony with no one factor receiving greater weight than another and none held as dispositive. These include: (1) whether the conclusion can be tested, (2) whether the procedure and basis of conclusion has been subjected to peer review and publication, (3) the test’s potential rate of error, and (4) standards of control for the technique’s operation.” (p. 265)³³

In the Journal of Urban and Contemporary Law it is noted that:

“Courts’ refusal to admit into evidence criminal psychological profiles is based on the grounds that they constitute impermissible character testimony, improper subjects for scientific or expert testimony, and unduly prejudicial evidence. Some courts, however, have permitted the use of profiles for the purpose of making probable cause determinations and linking crimes. Appellate courts have generally upheld these decisions.”³⁴

The legal implications and risks are directly related to a court’s permissibility of a criminal profiler as expert witness, the aspect of the case on which the profiler is testifying, and, often, the judge’s decision per trial. On one hand, a criminal profiler’s testimony could be very helpful in the investigation and prosecution of a suspect, but it must be kept in mind that the testimony could also be used by the defense in attempting to give the jury reasonable doubt if the profile does not fit the defendant. It may also be ruled as inadmissible when the case comes to trial.

Question 4: In what cases should a profiler be used?

Question 5: What qualifies a criminal profiler as an expert witness?

Question 6: What are the legal implications of using a criminal profiler in the investigation or prosecution of a suspect?

³¹ See *id* at 26

³² See *id* at 26

³³ (nd). If the Profile Fits: Admitting Criminal Psychological Profiles into Evidence in Criminal Trials. Journal of Urban and Contemporary Law. 54(239). Retrieved from http://law.wustl.edu/journal/54/Ingram_.pdf

³⁴ See *id* at 34