Today John Monahan is recognized, even in the Supreme Court of the United States, as the nation’s “leading thinker” on assessing risk of violence. *Barefoot v. Estelle*, 463 U.S. 880, 899 (1983). Two decades ago, when Monahan joined the Virginia Law School faculty, his appointment looked like more of a gamble. Although he had already established himself as a cutting-edge empirical researcher on issues of mental health law and the prediction of violence, Monahan had no legal training and no experience teaching law. His appointment as the first non-lawyer psychologist ever to hold a full-time position in an American law school required a leap of faith on both sides. In retrospect, the decision seems to have been inspired by luck or genius, for Monahan has not only flourished in the new environment but has become one of the real “stars” of the Virginia faculty.
Upon his arrival at the Law School, Monahan committed himself intellectually, as well as institutionally, to his new environment. He began a long and fruitful partnership with his new colleague, Laurens Walker, a specialist in the art and science of litigation. Monahan and Walker found a number of books suitable for teaching what is called “law and society.” (Under that rubric, social science scholars look at the ways in which social forces act on law and vice versa.) However, all of these books studied law from an “outside” perspective, analyzing law through the prism of behavioral science theory with little or no attention to the role of actors in the legal system. Monahan and Walker thought it would be intellectually more exciting—and practically more relevant to the education of future lawyers—to look at these questions from the “inside” perspective of the legal practitioner. Essentially, they wanted to ask what behavioral science could contribute to lawyers and litigation.

As there were no teaching materials adapted to that ambition, Monahan and Walker co-authored Social Science in Law (1985), a Foundation Press casebook now in its fourth edition. Like the very best of its kind, their casebook outlined an intellectual agenda. First, Social Science in Law explored the use of behavioral science in litigation to establish what they call “social facts.” These are essential factual questions that cannot be answered by reference to a discrete historical incident, questions such as whether consumers are confused between two trademarks or whether a sexually explicit film violates community standards for obscenity. Second, Social Science in Law analyzed the more general role of behavioral science as “social authority” for the appropriate content of the law. In the Monahan and Walker lexicon, “social authority” refers to the use of behavioral science to determine the content of legal doctrine, including such questions as the social consequences of segregation by race or gender. Finally, and most controversonially, Monahan and Walker identified a growing use of behavioral science to provide what they called “social frameworks.” These are intellectual constructs used to understand and interpret specific facts by placing them in a broader context. A good example would be the attempt to determine whether a particular woman acted in fear of her life by interpreting her experience in light of general construct of the “battered woman syndrome.”

After completing their casebook, Monahan and Walker set out to explore its insights. They did so in an influential series of law review articles on how courts should use behavioral science research. First came “Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law,” published in 134 University of Pennsylvania Law Review 477 (1986). That article outlined procedures to screen out poor studies and make exemplary research more apparent. When these procedures are followed, they argued, “fewer judicial opinions will rely upon social science material, but the material that is used will be of much higher quality.” Monahan and Walker followed this article with “Social Frameworks: A New Use of Social Science in Law,” 73 Virginia Law Review 559 (1987); “Social Facts: Scientific Methodology as Legal Precedent,” 76 California Law Review 877 (1988); and “Empirical Questions Without Empirical Answers,” 1991 Wisconsin Law Review 569. Although their collaboration was aimed chiefly at lawyers, Monahan and Walker also made their insights accessible to non-lawyers by contemporaneous publication of “Social Science in Law: A

More recently, Monahan and Walker have turned to the use of behavioral science procedures in mass tort litigation. Thousands—perhaps hundreds of thousands—of persons may claim to have been injured by exposure to such elements as asbestos or tobacco smoke. Determining liability and damages for such harms on a case-by-case basis is notoriously difficult and ruinously expensive. In “Sampling Damages,” 83 Iowa Law Review 545 (1998), and “Sampling Liability,” 85 Virginia Law Review 329 (1999), Monahan and Walker showed that behavior science sampling techniques similar to those routinely used in trademark or obscenity cases can be adapted to allow liability and damages to be determined accurately and efficiently, even in the largest mass tort cases.

This extraordinarily productive collaboration with Larry Walker did not mark the full extent of Monahan’s scholarly activities. In 1987, a call from Dean Richard Merrill rekindled Monahan’s earlier interest in mental health law and the prediction of violence. Merrill had a contact in the John D. and Catherine T. MacArthur Foundation, which was interested in funding a world-class program of empirical research in mental health law. A year of planning led to a successful proposal for the creation of the MacArthur Research Network on Mental Health and the Law, a program that Monahan has headed since its inception. The goal of the Network is to build the conceptual and empirical foundation for the nation’s next generation of mental health law. An article discussing the MacArthur Research Network in greater detail follows on page 20.

Monahan’s efforts to forge links between law and behavioral science have been widely acknowledged. In 1990, he received the American Psychological Association’s Distinguished Contribution to Research in Public Policy Award “for both fundamental and uniquely innovative research that has addressed key theoretical and policy ques-


tions in the psychology of law.” In 1996, he won the Isaac Ray Award of the American Psychiatric Association “for outstanding contributions to forensic psychiatry and psychiatric aspects of jurisprudence.” In 1997, he received an honorary doctorate in law from the City University of New York “in recognition of invaluable contributions to our understanding of violent behavior.” He has also been a John Simon Guggenheim Fellow, a Fellow at the Harvard and Stanford Law Schools and at the Center for Advanced Study in the Behavioral Sciences, and a Visiting Fellow of All Souls College, Oxford.

As the “leading thinker” on mental health and the prediction of violence, Monahan is often asked to serve as a consultant or expert witness in important cases, but scholarship remains his first love. He has published 13 books and more than 150 book chapters and articles. “I love everything about research,” he says, “having the original idea, planning out the study, conducting it, analyzing the results, writing it up. It’s still a thrill to find out something about law that no one knew before. I hope that thrill never ends.”
Although it is a relatively new field, mental health law has undergone major changes in the past few decades, including landmark judicial decisions, dramatic legislative initiatives, and the publication of professional standards in both criminal and civil law. All of these developments have been predicated on plausible but untested assumptions about people with mental disorder, the service delivery system, and the law—and about how these elements affect one another.

In an effort to build an empirical foundation for the next generation of mental health laws—laws that would assure the rights and the safety of indi-
In recent years, society has come to realize that mental disorder does not necessarily lead to incompetence. Even when it does, the ability to make some decisions regarding one's own treatment under civil law, or in the criminal process, may remain intact. But which disordered individuals are competent to make what kinds of decisions? The Network developed conceptual frameworks for measuring the competence of individuals with mental disorder to understand information presented to them, appreciate its implications, and use this information to make rational decisions. Based on the specific components of competence as identified in court decisions, the Network constructed and perfected a set of instruments—the MacArthur Competence Assessment Tools—to assist judges in determining an individual's decision-making abilities. These instruments, which only became available in 1999, have already begun to transform one of the most common types of mental health assessment performed in the United States.

The second issue the Network addressed was improving the ability of mental health professionals to assess accurately the risk that a person with mental disorder will be violent to others, a critical concern of both civil and criminal mental health law. “A great deal of research conducted over the past 25 years indicates that the validity of clinical risk assessments of violence is, at best, only modestly better than chance,” said Monahan. “This means that many people hospitalized as ‘dangerous’ are, in fact, perfectly safe, and that some people discharged from hospitals—or never hospitalized at all—are tragically violent in the community. We thought this state of affairs was unacceptable and that it was scientifically possible to do better.”

To this end, the Network mounted a multi-state study of approximate-
Research conducted over the past 25 years indicates that the validity of clinical risk assessments of violence is, at best, only modestly better than chance.

ly 1,000 people hospitalized for mental disorder. The patients were assessed in the hospital on over 100 factors theorized, but never demonstrated, to indicate risk of violence, and then the patients and their family members were interviewed about violence during the year after the patients' discharge into the community. Police and hospital records were also gathered. The results of this landmark research, to be published early in 2000, indicate that it is indeed possible to specify the violence risk of the great majority of patients.

Finally, the Network squarely confronted one of the flashpoint issues in mental health law: coercing a person's admission to a mental hospital. Debate about involuntary commitment contrasts a prospective patient's legal rights to decision making autonomy with government's position that impaired decision making does not warrant legal protection, especially when the decisions made might endanger the patient or others. In a series of studies, Network researchers found that a patient's experience of being coerced bore only a loose relationship with his or her legal status. Many legally "involuntary" patients said they actually wanted to be in the hospital, and many legally "voluntary" patients experienced a great deal of coercion—albeit from their family and friends rather than from a judge. Further, a patient's experience of coercion depended strongly on what the Network termed procedural justice, that is, on whether the patient had been given a chance to tell his or her "story" and had been treated with dignity and respect in the hospital and in court. Dozens of research projects throughout the world are now underway using the instruments to measure coercion that the Network developed.

The Research Network is now completing its final phase. Research on competence and on coercion was completed in 1999. The studies of violence risk are now being finalized. Five books and over 50 publications in behavioral science and legal journals have already appeared. The studies have provided new tools and criteria for assessing competence and risk of violence, and have broadened the understanding of the appropriate role of coercion in mental health services.

As for John Monahan, "The MacArthur project has been the most intellectually exciting thing I've ever done. To be able to do exactly the kind of research you think needs to be done... this was a once-in-a-lifetime opportunity." Empirical research is not the kind of scholarship that law professors typically do. "Only in an intellectual environment as diverse and supportive as the Law School's could a project like this have flourished," Monahan added.

More information on the work of the MacArthur Research Network on Mental Health and the Law can be found at the Network's frequently updated Web site: http://ness.sys.virginia.edu/macarthur/.
WHAT I CANNOT DO—what no one can honestly do—is offer a neat, simple story that explains why there is so much violent crime in America. Only people on the extremes of the political spectrum have that luxury and that conceit. The root cause of violence, says the right, is bad genes or bad morals. Not so, says the left; the root cause of violent crime is bad housing, bad schools, or dead-end jobs.

I am here to tell you that while doing something about the causes of violence surely requires a political ideology, the only way we have a prayer of finding out what those causes are in the first place is if we check our ideologies at the door and try to keep our minds open as wide, and for as long, as we can bear it . . . .
If research on violence were like stock on Wall Street, then where I would put my money right now is on psychology. By this I most emphatically do not mean mental disorder. The best epidemiological evidence indicates that major mental disorder accounts for at most three percent of the violence in American society. What I mean instead are the developmental processes that we all go through, most of us more or less successfully but some of us with great difficulty. I mean particularly the family—the filter through which most of the sociological factors, such as a parent’s being unemployed, and many of the biological factors, like poor nutrition, seem to have their effect on a child growing up . . . .

What do we know about families and children and violence?

- We know that while many aggressive children go on to be law-abiding adults, aggression at age eight significantly predicts violent convictions well into the 30s in every culture in which it has been studied.
- We know that while most children who have been physically abused by their parents go on to be perfectly normal adults, physical abuse doubles the risk that a boy will have convictions for violent crime as an adult.
- We know that failure of a child in school is one of the most enduring correlates of later violence. Four out of five violent offenders in prison never finished high school.
- We know that stability matters; the more changes of placement a foster child experiences while he or she is growing up, the more likely he or she will later be arrested for a violent crime.
- We know that a lack of parental supervision has been consistently related to delinquency, including violent delinquency. One study, for example, found that ten percent of non-delinquents were poorly supervised by their parents, one-third of one- and two-time delinquents were poorly supervised, and more than three-quarters of repeat offenders were poorly supervised. Another study found that for children growing up in very disadvantaged and violent neighborhoods, who look like they have everything going against them, the one factor that seems to protect against the child growing up to be violent is having a parent—overwhelmingly, a mother—who supervises her child very strictly and who nips misbehavior in the bud rather than waiting for the principal to call or the police officer to knock on the door.
- Finally, we know much about the relationship between illegal drugs and violence. But it is important to remember that the connection between one legal drug—alcohol—and violence is beyond dispute. About one-third of all violent offenders are alcoholic, and the earlier an adolescent starts to drink, the more likely he or she will be violent as an adult . . . .

None of this in any way negates the influence of social conditions in giving rise to violence. Poor people without adequate child care, for example, may have a much more difficult time monitoring their children’s behavior than affluent people with live-in help. Nor do they necessarily negate the possible influence of biological factors. Nutrition, to give another example, is something that parents literally put on the table for the child to eat. But it is through the family that these things have their effects and through the family that those effects might best be redirected.

We know some important things about violence. But we do not know nearly enough about how to prevent violence in the first place or how to stop it from happening once it begins. How can we learn more? . . .

We can learn more if we make a long-term national investment in research and development for a safer America. It takes resources to isolate the biological, sociological, and psychological factors that are associated with violence, to untangle the ball of wax we find them in, and to determine which are the causes of violence and which are its effects . . . . We need to put at the top of this research agenda a program of rigorously evaluated interventions to reduce violence. We will know that we have finally understood the causes of violence when we can take a group of children at high risk of becoming violent and ethically offer them opportunities and services to defy our predictions.

Publications of John T. Monahan

**BOOKS**


**CHAPeRS IN BOOKS**


*Research in Community and Mental Health: Coercion in Mental Health Services* (JAI Press, 1999) (with J. Morrisey).


*Children, Mental Health, and the Law* (Sage, 1984) (with others).


*Who is the Client? The Ethics of Psychological Intervention in the Criminal Justice System* (American Psychological Association, 1980).

*Prevention in Mental Health: Research, Policy and Practice* (Sage Publications, 1980) (with others).

ARTICLES


