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Family Law Review Articles

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The Overuse and Misuse of Psychological Testing: Why Less Is More

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Psychological testing as an adjunct source of parental information has been used in custody evaluations for many years. Relevant, valid, and reliable tests and inventories can supplement a complicated assessment process and confirm information gained through other methods such as interview and observation. Test results can increase self-awareness for parents. Test data may help inform an attorney's view of their client, leading them to make adjustments in their legal approach. Robust results may provide the evaluator significant comfort in terms of their final conclusions, opinions, and recommendations.

However, there is a dark side to the use of psychological testing in family law cases that must be acknowledged. Attorneys and judges may over rely on test results that have limited relevance to the assessment of actual parenting, leading to inaccurate legal arguments and legal decisions. Parents may use the test results as weaponry in the war over children. Evaluators may skimp on more valid procedures such as interview and observation because testing is easy and quick. Finally, parents may be charged hundreds if not thousands of dollars for test administration and interpretation that may add only marginal value to the overall assessment.

Psychological testing has become an industry fueled by computerized administration, scoring, and interpretation. Test manufacturers and developers market their products to psychologists and attorneys, touting the utility of the tests in custody cases. Statistical norms and special interpretative programs have been developed for specific use with the custody evaluation population. Testing products have become well-packaged and well-advertised, creating an aura of increased value.

With these "advances," the risk of overuse and misuse of testing has risen exponentially.

Controversy regarding the use of testing is not new,¹ but many family law professionals see the debate as internal to the field of psychology. However, the negative impact of the over-use or misuse of test results is important to all who operate

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in the family law arena. This article examines the four main problems associated with psychological testing as a custody evaluation procedure: the self-report problem, the lack of relevant measures problem, the reliability problem, and the weight problem.

THE SELF-REPORT PROBLEM

The naïve consumer of test results believes that psychological testing reveals things that cannot be uncovered by other methods of inquiry. For example, when test results are reviewed with attorneys and parents, their questions often include, "What did this tell you about me?" or "What was discovered?" In the context of custody disputes, parents are usually hoping that testing will expose the horrible personality traits and thoughts the other person possesses but is unwilling to reveal. Another common comment is, "I hope the testing will help you see through" the other parent. Many people – professionals and clients alike – think of psychological testing as they do of blood analysis, DNA testing, or an MRI. They believe things unknown to the test taker will emerge and indicate some form of pathology or psychological dysfunction for all to see.

This type of thinking about psychological testing is inherently inaccurate. All psychological tests – objective, subjective, educational – are dependent on self-report. This means that the test taker consciously answers questions or responds to prompts. When appropriately administered, the test taker understands the questions or prompts and almost always understands the implication or meaning of their response. In other words, it is highly unlikely that testing unmasks personal characteristics that the test taker does not consciously endorse in the way they respond to the test questions. There is no "revealing" process that takes place. Rather, test results reflect how the test taker sees himself or herself at that particular point in time. Nevertheless, results are often presented in reports and in testimony as some reflection of some characteristic or pattern about a person that was previously unrevealed and unreported by the test taker. In fact, it is only the test taker's perception of himself or herself that is revealed.

MMPI-2

For example, the most often used test in custody evaluations is the Minnesota Multiphasic

Personality Inventory – 2 (MMPI-2).² A review of some of the items on one of the scales demonstrates the importance of the self-report issue. Scale 8 – the Schizophrenia scale – contains items that represent symptoms of a psychotic disorder. In the context of a custody dispute, one could reasonably assume that the presence of floridly psychotic features would be at least somewhat connected to a parent's ability to care for children.

Parents may use test results as weaponry in the war over children.

Items on Scale 8 inquire about symptoms such as depression, paranoia, and hallucinations. All of the items on the scale are simple and transparent. If a test taker responded in the affirmative on certain questions, he or she would be admitting to psychotic symptoms. If there is a negative response on those same questions, the person could be psychotic but intelligent enough to answer in the negative. In other words, the response reflects what the test taker wants to portray.

Good test construction attempts to get around the self-report problem in a variety of sophisticated ways. Validity scales purport to explore levels of guardedness, defensiveness, hyperbole, or other unusual test response styles. Most tests that are considered well-constructed would include some way to characterize whether the person responded in a defensive or erratic manner compared to other people who have taken the test. However, validity scales do not tell whether a person is "lying or telling the truth." Validity scales only expose whether the test taker's response set was atypical. That is specifically why custody norms were developed for the MMPI-2 – because compared to other groups, parents in the midst of a custody battle are abnormally defensive.^{3,4}

The only way to verify the absence or presence of past and/or current symptoms as reported on a test would be through personal interview and observation, history taking, collateral interviews, and document reviews – all of which are required in a competent custody evaluation protocol. So, generally speaking, the question is whether there is significant value added with testing.

Sometimes test results are used in court as "stand alone" findings, or become the findings that tip the scale when other convergent data is absent. In a sea of hearsay evidence, some form

of psychological "blood work" that purportedly reveals some truth about a person can be appealing and persuasive.

For example, a court was interested in answering the question of why two young girls had come to refuse contact with their mother in spite of a long history of at-home parenting and close mother-child relationships. The mother's attorney presented data showing a long history of domestic violence by the father and a history that included a previous custody dispute with another mother and similar allegations of alienation. A psychologist hired by the father's attorney testified that based on results of the MMPI-2 and the MCMI-III, the mother had a histrionic personality disorder that contributed to her children's alienation from her. This testing result was presented as a "stand alone" finding; the psychologist had not interviewed the mother or reviewed any mental health records. Although this testimony was not pivotal, it was to some degree persuasive. The court found that the mother's "hysterical" behavior had contributed to the children's alienation and sustained a liberal parent time schedule for the father.

Research on memory as well as the accuracy of self-reporting demonstrates that people are generally inaccurate reporters of their own behavior, and their recall of events is unreliable.⁵ This means that the foundation of all psychological testing – self-report – is inherently limited by the inability to see one's self accurately. It is even more concerning that the literature on the accuracy of self-perception of parenting behavior indicates that parents are relatively poor judges of their behavior in relation to their children.⁶

The self-report problem is significant because: (1) tests only reveal what people are willing to disclose about themselves; (2) people are inaccurate self-observers; and (3) the custody evaluation context produces a higher than normal level of deliberate response distortion.

THE LACK OF RELEVANT MEASURES

Any test administered should be directly relevant to the question at hand. There must be a logical and reasonable link between the referral question and what the test actually measures. This is especially important when the circumstances of a child's life may hinge to some degree on test results.

The purpose of a custody evaluation is to determine the fit between a child's needs and parents' capacities to meet those needs. Determining the child's needs should be the first task completed.

That assessment should include an analysis of the child's individual functioning within the home, school, and community. If a child has special needs (medical, educational, or psychological) then testing specific to that need may be appropriate only if testing for the need has not occurred in another setting, is out of date, or is identified as poorly done or incomplete. Appropriate tests could help to diagnose specific learning disorders, attention deficit hyperactivity disorder, anxiety, mood dysfunction, and autism spectrum disorders.

It is actually rare that this type of testing has not already been performed prior to a custody evaluation. Determination as to special needs is a highly relevant piece of the custody puzzle, but can most often be assessed through existing records or collateral interviews with care providers and educators. Consumers of custody evaluations should beware of evaluators who have a "standard battery" of tests for children that include these time-consuming and expensive types of "special needs" tests.

Sometimes, however, a child has not been evaluated for psychological issues such as depression, anxiety, or mild behavioral problems. If interviews and observation suggest that the child's needs might include treatment for these issues, or at least enhanced parent awareness of the issues, then simple questionnaires and symptom checklists may be useful both in terms of evaluation and treatment. This may include assessments such as the Connors checklist,⁷ the Achenbach Child Behavior Inventory,⁸ or the Behavior Assessment Scales for Children-2.⁹ These are transparent questionnaires that can be completed by parents, care providers, or teachers and are consequently non-invasive methods of assessment for the child.

Appropriate special needs testing and screening tools for psychological and behavioral problems are relevant to the process of determining a child's needs and relevant to assessing the fit between a parent's capacity and that child's needs.

MINIMAL PARENTING REQUIREMENTS

However, testing for adults involved in custody disputes is far less clear cut in terms of relevance and validity. The question in such circumstances is the parent's capacity to meet the needs of the child, i.e., what is *minimally* required to safely raise a child? Most would name the following:

- an adequate level of intelligence so that the parent understands the child's basic needs;

- a minimal knowledge of child development and potential harm factors;
- an adequate level of emotional availability/responsivity, so that the child has a sense of emotional caregiving from the parent;
- the physical ability to care for the child or the ability to arrange adequate physical care;
- the ability to provide some social exposure so that the child is not raised in complete isolation; and
- the ability to keep a child physically and emotionally safe.

Only the first two issues on the above list – intelligence and knowledge – may be evaluated by formal testing. There are no tests that can reliably and objectively measure the last four parenting characteristics on the list. The last four issues can only be reliably assessed through interview, reported and documented parenting history, and observation. Most evaluators (unless they are involved in dependency cases) never see a case where these basic qualifications are not minimally met by both parents. Thus, the evaluation is generally centered on far more subtle distinctions between parents.

Additional Parenting Issues

What additional parenting behavior/issues directly connect to a parent's ability to meet a particular child's needs? Most child development experts would recite the following parenting characteristics as crucial (beyond the basic qualities listed earlier):

- the ability and willingness to comfort and soothe;
- an understanding of developmental needs/shifts, so that parenting can adjust as required;
- appropriate child management and discipline measures; and
- the ability and willingness to provide adequate educational, social, and extracurricular exposure.

Over the past two decades, a plethora of "tests" have been developed to examine these characteristics, none of which have gained widespread use or credibility in psychology or the family law area.

Such "tests" do not examine real-life behavior; rather, they rely on the parent's self-report. Many structured interviews have been developed to guide the evaluator to cover essential topics during interviews, and these have value as data-gathering tools. Additionally, many parenting interviews have been developed that ask for a parent's responses to real-life parenting situations. These interview results are valuable as long as history and observation corroborate the parents' responses.

The response reflects what the test taker wants to portray.

In far too many cases, psychological testing developed to examine individual personality traits, clinical symptoms, relationship dynamics, and specific behavioral anomalies (such as substance abuse and domestic violence) becomes the testing focus. This is in spite of the fact that there is no research that links actual observed or reported parenting behaviors to specific test results from these tests.

The most common tests performed on parents in custody evaluations are personality inventories such as the Minnesota Multiphasic Personality Inventory-2 and the Millon Clinical Multiaxial Inventory-III.¹⁰ The published interpretations of test results often include personality disorder diagnoses. Interestingly, the newest version of the DSM-V (Diagnostic and Statistical Manual for Mental Disorders), expected to be published in the spring of 2013, recognizes limitations in the current personality disorder diagnostic labels. These limitations include the poor discriminative value and reliability of personality diagnoses. Historic personality disorder diagnoses will be subsumed within a continuum of personality dysfunction.¹¹ The well-accepted concept that pathological personality traits are stable will be revised. To some degree, personality interpretations as we currently know them will become obsolete, and revised or new personality tests will emerge to fit the diagnostic shift.

THE RELIABILITY PROBLEM

Parenting assessment should be most interested in patterns of personal and parenting behavior – behavior that has been demonstrated to occur repeatedly over time and context. That type of information is gleaned only through history taking,

comparing interview information between parents and children, document review, and collateral interviews.

Too often, evaluators and attorneys present, and judges accept, that psychological test results provide information about a parent's historical, current, and future behavior. In reports and during testimony, data is presented as though it reflects highly stable and pervasive psychological traits and states. Knowingly or not, it is easy to present test results implying that a parent would obtain similar results indefinitely. In the worst situations, judges are led to believe that the test results are predictive of a person's future behavior. In other words, "once depressed, always depressed," or "once a person with substance-abuse potential, always a person with substance-abuse potential."

Behavior Change over Time

The notion that behavior does not change simply is not true. People can and do change their behavior over time if motivated or if circumstances demand. Secondly, and more germane to this discussion, even the best constructed and researched tests' proven re-test reliability is surprisingly limited. For example, test-retest reliability statistics for the MMPI-2 are based on the re-administration of the inventory seven days after the original administration.¹² There is no research evidence suggesting that a person would receive a similar result two months or two years from the testing date.

Common sense says that most people are likely to respond similarly to a set of personal questions across a week or two. However, common sense would also say that is not a reasonable expectation in even a year, let alone the lifetime of a child. The years surrounding divorce are fraught with emotional, social, and financial upheaval. It can logically be expected that test results from this period will not reflect a parent's more normal or enduring psychological status. Yet, test results are routinely used as though they are indicators of a parent's permanent capacity to function.

In family law, it has become generally accepted that no parenting plan is likely to be viable for the length of a child's minority. Often evaluators, attorneys, mediators, and judges will recommend periodic review and revision of parenting plans so that the evolving circumstances of the child and families can be taken into account. This assures that children are not trapped in a parenting plan that does not evolve in tandem with their needs and best interests. It is ironic that family law professionals

acknowledge the evolving nature of the life of a child but cling to the idea that psychological testing given at one point in time identifies the personality and relationship characteristics of a parent for all time.

THE WEIGHT PROBLEM

Parents who do not function at a minimally adequate level typically are seen in dependency court settings. Family court parenting disputes most often involve two parents who meet at least minimal parenting standards on basic parenting skills and issues. Consequently, the forensic search light scans for things that can differentiate between parents and help build a case for a preferred parenting arrangement. Decisions often hinge on very subtle differences between parents and, too often, those minute differences are "revealed" by psychological testing results that have identified one parent or the other as possessing certain qualities that have been interpreted as undesirable. While one would hope that more valid, relevant, and reliable factors (actual parenting history; observed characteristics of the parent-child relationship; demonstrated capacity to sacrifice, learn, and change) carry more weight in the courtroom, the fact is that a persuasive psychologist can sway an inclination on the part of a judge toward a more robust conclusion.

The use of psychological experts in custody disputes has become very common. The more complicated the case, the greater the tendency for attorneys to request and for psychologists to provide more testing. In the absence of other data that clearly distinguishes between parents, the court may place considerable weight on expert testimony, including test results.

If psychological test results were always put in proper relation to other types of data and were never used as the pivotal point of information, then this topic would be more benign. However, that is not the case. Whole books are devoted to the use of psychological test results in forensic cases. Seminars are given, chapters written, and test development continues. The fact that most tests are now computer scored, and a visually appealing graph or result page is generated, adds to the illusion of quality, relevance, reliability, and importance.

FINAL THOUGHTS: LESS IS MORE

There is a place in custody evaluations for a very small amount of testing in special cases with special

circumstances, but the overuse and misuse of psychological testing is a serious problem for the family court.

Determining the child's needs should be the first task completed.

Many studies across various fields (e.g., health-care, psychology, public health, education, human relations, and nutrition) have examined the best ways to predict future behaviors.¹³ That research has identified factors that are highly correlated with the actual display of a behavior. Those factors include: strength of the intention to perform the behavior; past experience; the strength of the desire and the attitude toward the behavior; and the perceived ability to engage in the behavior. When research-supported models for behavioral prediction are applied, it appears that classic parenting evaluation strategies, such as a thorough clinical interview, investigation of past behaviors, behavioral observations, and collateral sources, will likely produce the most useful and relevant information with the greatest utility in predicting parenting behavior.

Rather than continue to utilize testing that is both plagued by the problems identified in this discussion and becoming obsolete even in the psychological community, it behooves the family law professional to reevaluate his or her position on the use of psychological testing in custody evaluations.

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