

## Psychological Assessment: An Update on Ethics, MMPI-2 Revisions, Court Topics and Malingering

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## Learning Objectives

- Understand the differences in the 2002 ethics code compared to the 1992 ethics code
- Understand the process of resolving ethical dilemmas often inherent to the role of evaluator
- Understand the dilemmas created by new technologies in terms of testing

## Learning Objectives

- Understand the nature and method of forensic assessment
- Increase understanding of specific assessments and methods for particular types of evaluations
- Increase understanding of the basics of communicating with the courts including consultation, report writing and expert testimony

## Learning Objectives

- Learn about the restructured clinical scales and RF form of the MMPI-2
- Understand the newest research into non-gendered T Scores
- Understand the newest research into K and Non-K corrected scores

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## The New Code

- After 5 years, 7 drafts & a series of public comment periods...
- The 2002 *Ethical Principles of Psychologists and Code of Conduct* finally became effective on June 1, 2003.

## Notable changes

- release of raw test data
- student publication
- informed consent
- therapy termination.

### Most significant changes.

- **Release of test data**  
**Standards 9.04 and 9.11**
- The 2002 code eliminates a prohibition in the 1992 code that prevents psychologists from releasing raw test data to individuals who are not qualified to use them. As of June 1, 2003 psychologists must release test data to clients and their designees when clients provide a written release.
- In the absence of a client release, psychologists provide test data only as required by law or court order.

### Test Data & HIPAA

- The Ethics Code clarifies the amount of discretion psychologists have in refraining from releasing test data under the Health Insurance Portability and Accountability Act (HIPAA), which directs providers to release certain health information to clients upon request.
- Shift from a paternalistic stance to a more autonomy-based stance that stresses the patients' rights to make decisions for themselves about health care

### Can Withhold

- The 2002 code does permit psychologists to withhold test data to protect the client from "substantial harm or misuse or misinterpretation of the data or the test."
- HIPAA does not recognize the misuse or misinterpretation of tests as a legitimate reason to withhold health records

### Definitions - Test data

- "raw and scaled scores, client/patient responses to test questions or stimuli, and psychologists' notes and recordings concerning client/patient statements and behavior during examination" as well as "portions of test materials that include client/patient responses."

### Definitions - Test materials

- "manuals, instruments, protocols, and test questions or stimuli," and do not include test data.

Informed-consent requirements for experimental research standard 8.02b

- specifies the parameters of informed consent explicitly for psychologists conducting intervention research on experimental treatments.

### Must include

- The experimental nature of the treatment.
- The services that will or will not be available to the control group(s).
- The means by which assignment to treatment and control groups will be made.
- Available treatment alternatives if an individual does not wish to participate in the research or wishes to withdraw once a study has begun.
- Compensation for or monetary costs of participating, including whether reimbursement from the participant or a third-party payor will be sought.

### Assessment standards - standard 9

- 9.02, emphasizes that psychologists should only use assessment instruments that are valid and reliable for the population being tested. If validity or reliability haven't been established, they should describe the strengths and limitations of their results and interpretation. It also directs psychologists to use assessment methods appropriate for an individual's language preference and competence, unless the use of another language is relevant to the assessment.

### Assessment standards - standard 9

- 9.03 informed consent in assessments includes the nature and purpose of the assessment, fees, involvement of third parties, confidentiality limits and a chance for clients to have their questions answered.
- in instances when informed consent may be waived--when testing is mandated by law or government regulation, when informed consent is implied or when evaluating decisional capacity--psychologists should still provide information about the assessment in understandable language.

### Informed consent in therapy - standard 10.01b

- Psychologists must tell their patients when they would like to use a new treatment for which "generally recognized techniques and procedures" haven't been established.
- This should include discussions of the developing nature of the treatment, the potential risks, alternative treatments and the voluntary nature of their participation.

### Informed consent

- While psychologists are now required to tell patients if a treatment is experimental, the Ethics Code does not prohibit the use of new treatments as long as they are based on scientific or professional knowledge.

### Aspirational not Standards

- Specific language that the code's General Principles are aspirational in nature, and "do not represent obligations and should not form the basis for imposing sanctions."
- Modifying words in the code, such as "reasonably," "appropriate" and "potentially."

### Education standards

- Separate standards for education and training, and research and publication. Under the 1992 code, section 6 covers teaching, training supervision, research and publishing. The 2002 code's section 7 specifically addresses education and training, while section 8 focuses on research and publication.

### Interpreters

- Standard 2.05 - psychologists should take reasonable steps to avoid interpreters who have multiple relationships with clients, and that the translator should be competent.

### Interpreters

- Standard 9.03c requires psychologists who use an interpreter to obtain informed consent from the client to use that interpreter, ensure the confidentiality of test results and include the limitations of the data when giving recommendations, reports, evaluations or forensic testimony.

### Electronic Communication

- Language throughout the code that addresses the Internet and electronic transmission. For example, Standard 4.02c stipulates that psychologists who offer services, products or information via electronic transmission inform their clients of the risks to privacy and limits of confidentiality.

### Technology Issues

- New issues related to office technology
- Follow the Golden Rule
- treat others' records as you would want your own private and confidential info treated

### Electronic record keeping

- viruses
- disgruntled employees
- hackers

### Technological Savvy

- ignorance is not an excuse
- 'cable modem' branches
- firewall
- anti-virus

### Precautions

- RAID controllers
- removable media
- off site storage
- VA Med center vs university/clinic vs solo practice

### Security

- Password rules/policies
- Wireless networks
- dial-up access
- VPNs

### 7 Issues in Conducting Ethical Forensic Assessments - Butcher & Pope

- Appropriate Graduate Training
- Competence in use of standardized tests
- Using test that fit the task
- Using tests that fit the individual
- Administering tests correctly
- Using computers appropriately
- Assessing & Reporting factors that affect the meaning of findings

### Appropriate Graduate Training

- Competence established by education, training & experience
- Limit practice to those areas in which you possess specific knowledge, skill, experience & education

### Appropriate Graduate Training

- Foundation in grad school
- Clinical understanding of mental & emotional problems
- Validity, reliability, test construction, confounding factors

### Competence in use of standardized tests

- Education
- Training
- Supervised experience
- You **MUST** understand validity, reliability, standardization, central tendency, variance, correlation, inferential statistics, standard scores

### Competence in use of standardized tests

- Not having such knowledge can result in ethical sanctions.
- APA ethics comm. offers a typical case regarding incompetence. The committee "found that the person had no training or education in principles of psychological testing but was routinely engaged in evaluations of children in child custody battles."

### Using tests that fit the task

- "The Standard Battery"
- Is this test reliable and valid for the purpose at hand?
- Is this person in a special population which requires modifying the interpretation of tests?
- Evidence for validity changes over time

### Using tests that fit the task

- Dr. Weiner - Ed. Of J. Personality Assessment.. "The passage of just a few years...is sufficient to land practitioners who have not kept current on the doorstep of unethicity."

### Using tests that fit the individual

- Test can become inappropriate for use with a given individual due to:
  - Passage of time
    - MMPI norms vs MMPI 2 (MMPI-A) re-standardization project
  - Geographic & Educational representation
    - MMPI was rural - less educated in contrast to newer norms

### Using tests that fit the individual

- Ethnic & Racial bias
  - MMPI reference group was all Caucasian
- Statements must be made about the limits of the test if it indeed does fit the individual.
- If it does not fit then it should not be used

### Administering tests correctly

- Standardized test - standardized administration
- Adequate monitoring of administration
- "Departing from the standard administration, scoring & interpretation cuts the vital link between the test & its validation research from which it draws its power."

### Using computers appropriately

- Standardized administration issues if not the developer's computer program
- Assurances that computerized scoring services are error-free.
- Assurance that transformation of scores into profiles and profiles into interpretive statements error free

### Using computers appropriately

- Today's scoring services are advantageous, especially in forensics
  - previous use in court
  - minimizes hand scoring errors

### Assessing & Reporting factors that affect the meaning of findings

- Note limitations in the report
- Distractions
- Medications
- Motivation to respond deceptively
- Note any personal reservations in the report

### Why Test?

- Provides a framework within which the patient and his treatment plan are conceptualized
- Answers specific question that may impact diagnosis or treatment plan
  - dual diagnosis issues

### Why Test

- Increase utilization efficiency of a brief inpatient stay
  - know more, quicker
- Facilitates outpatient follow-up
  - shorter stays means less is known when they start outpatient care

### When to consider testing

- Specific question as to differential diagnosis
- Failed past treatment attempt
- Patient not sharing info readily

### Validity & Reliability

- Validity
  - Test measures what it purports to measure
- Reliability
  - Results consistent over time

### Validity & Reliability

- A scale that reports a weight different from the true weight is invalid
- A scale that reports a different weight for the same person across similar trials is not reliable

### Assessment versus Testing

- Assessment is a broader concept
- Interview, Observation, Physiological Info, Etc
- Differentiates simply compiling scores from integration of a multi-faceted approach
- Analogy of collecting info at the crime scene versus identifying the culprit
- Psychologists assess rather than simply test

### Three Kinds of Tests

- Self Report
- Actuarial
- Projective

### Self Report

- Analogous to doctor asking you for symptoms
- 'How are you feeling' type tests
- SCL-90, AACL

## Actuarial (standardized)

- Analogous to a blood test
- Compare your answers to some kind of norms
- MMPI, WAIS-R

## Projective

- Analogous to x-rays
- Looking for a deeper level of meaning
- Rorschach, TAT, H-T-P, Incomplete Sentences

## Types of Tests

- Personality
- State (Affective)
- Trait
- Cognitive
- Neuropsychological

## Types of Tests

- Pain assessments
- Intelligence
- Combined with information obtained through clinical interview to arrive at a diagnosis

## Personality

- MMPI-2, MMPI-A
- 16 PF (personality factor)
- Personality Assessment Inventory (PAI)

## State

- Beck Scales
- Depression, Anxiety, Hopelessness, Suicide
- MAACL
- Brief Symptom Inventory
- Geriatric Depression Inventory
- Hamilton Depression Scale

## Cognitive

- COGNISTAT
- Weschler Memory Scale III
- Brief Cognitive Rating Scale
- Folstein Mini Mental Status
- Global Deterioration Scale

## Neuropsychological

- WAIS-R NI
- Halstead-Reitan Battery
- Bender Gestalt
- Trail Making
- Luria-Nebraska
- Shipley Institute of Living Scale - Revised

## Intelligence

- WAIS-III
- Shipley Institute of Living Scale - Revised
- Stanford Binet
- Kaufman

## Achievement

- WIAT
- Woodcock Johnson

## Diagnosis Specific

- Yale O-C Scale
- MAST
- CPT, VIGIL
- SASSI, SASSI-3

## MMPI (-A) (-2)

- original, revised, adolescent
- 567 true or false questions
- 10 main scales
- i.e. depression, schizophrenia, introversion
- compared to norms for a given population
- scores are high, low or average in comparison to others of that group
- built in validity scales

## Putting The Pieces Together

- Similar info across different types of measures
- Consistent with interview impressions
- Consistent with other known info
- Seems to fit clinically
- Simplest explanation first
  - horses before zebras

Q: What is your date of birth?

A: July 15th.

Q: What year?

A: Every year.

Q: What gear were you in at the moment of the impact?

A: Gucci sweats and Reeboks.

## Nature and Method of Forensic Assessment

- State of the Art
- Paucity of scientific knowledge concerning human behavior in many contexts
- Uncertainty in behavioral sciences
- Gaps in current state of knowledge with respect to questions of law
- Some questions asked by law are inherently unanswerable

## Uncertainty in Behavioral Sciences

- Question of sufficient rigor to warrant admissibility of opinions
- If admitted, how much weight should they be given
- Scientific vs clinical opinions
- Generalizability of findings
- Often seen as more art and intuition than science by legal community

## Gaps in current state of knowledge with respect to questions of law

- Lots of research on children and divorce
- Little is directly applicable to child custody disputes of matters of policy
- Lots of research on training persons with MR in self-help and social skills
- Little research on training women with moderate MR in use of contraception or avoiding sexual abuse - relevant to a court's question of involuntary sterilization

## Some questions asked by law are inherently unanswerable

- How will it impact a child to spend one versus two weeks a year with a particular parent?

### Paradigm Conflicts

- Legal vs Behavioral philosophies
- Free Will vs Determinism
- If you have a seizure and hit someone you are not held responsible
- If you have a mental disease that accounts for a symptom is it the same?
- A compulsion to act because of OCD?

- Probability vs Certainty
- Group statistics and individual statistics
- Comparing one person to a group
- Soft variables - not easily defined
- Quantification of behaviors or events

### Professionals as Experts

- Limited area of expertise
- Qualifying the expert - Voir Dier
- Exclude purely moral or legal opinions
- Discuss limitations of testimony
- Discuss validity and level of certainty of opinions

### Frye

- Until 1993 dominant rule of evaluating clinical testimony
- Frye v United States 1923
- Attempt to admit polygraph into evidence
- "Sufficiently established to have gained general acceptance in the particular field to which it belongs"

### Frye

- Seen as overly conservative by some
- May exclude novel but reliable evidence
- Seen as too lax by others
- Easy to get in unreliable evidence whenever it achieves acceptance despite lack of scientific credibility (e.g. clinical predictions of dangerousness)

### Daubert

- US Supreme Court 1993
- Daubert v Merrell Dow Pharmaceuticals
- "an inference of assertion ... derived by scientific method"
- Court should decide whether the reasoning or methodology properly can be applied to facts in issue"
- Dr. Abel's test 2002 - 2005

### Specific Assessments and Methods

- Competency to Stand Trial
- Competency to consent to search or seizure
- Mental status at time of offense (MSO)
- Guardianship over finances
- Competency to make treatment decisions

Q: This myasthenia gravis, does it affect your memory at all?

A: Yes.

Q: And in what way does it affect your memory?

A: I forget.

Q: You forget. Can you give us an example of something you've forgotten?

### Specific Assessments and Methods

- "Psychological Evaluations"
- Substance Abuse Evaluations
- Sex Offender Evaluations
- Sexual Predator Evaluations
- Parenting Evaluations
- Domestic Violence Evaluations
- Child Custody Evaluations

### Competency to Stand Trial

- Rogers ECST-R 2004 - Evaluation of competency to stand trial - revised 2004
- MacArthur competence assessment tool criminal adjudication (MacCat CA)

### Competency to consent to search or seizure

- 4<sup>th</sup> amendment issue - was the person competent to consent
- No cause is needed in a voluntary search
- Focused on extent to which police coerced the consentor
- Interaction of police behavior and subjects vulnerabilities

### Competency to consent to search or seizure

- Welsh S. White Miranda's warning protections 2001
- J. Vijoen et al. An examination of the relationship between competency to stand trial, competency to waive interrogation rights and psychopathology 26 L and Hum Beh 481 (2002)
- Recent supreme court decision says if both persons present then both must consent if both have interest. If only one present then he/she can consent

### Mental state at time of offense

- Often involved in the "insanity defense"
- Or, as we say in Kansas.....
- So Long and thanks for all the Thorazine...
- Kansas is one of a handful of Mens Rea states

### Insanity Defense

- M'Naughten Standard
- Daniel M'Naughten 1843
- Jan 20, 1843 28 y/o Glasgow woodturner
- Shot Edward Drummond on a London Street
- Drummond died 3 months later
- Mistook Drummond for England Prime Minister Robert Peel
- Defense was insanity

### M'Naughten Trial

- 9 medical witnesses
- Extreme paranoia and delusions
- Thought the Tori party was responsible for all his troubles and personal difficulties
- No medical opinion to the contrary
- Lord Chief Justice Tindal directs verdict of acquittal

### Did he ...

- Have competent use of his understanding?
- Know that the act was wicked and wrong?
- Know that it was a violation of the law of God and man?
- Have the capability to distinguish right from wrong
- If not then find acquit the prisoner
- Verdict was not guilty on grounds of insanity
- Sent to mental institution to live the rest of his life

### Queen was not happy

- Queen worried about attacks on her own life
- Public and Press were on Queen's side
- Referred to Parliament
- House of Lords said "must be clearly proved that, at the time of the act, party was laboring under such defects of reason or disease of the mind so as to not know the nature and quality of the act or, if he did know, that he did not know it was wrong (legal not moral)."

### Agreed

- Had the jury had those instructions, M'Naughten would have presumably been convicted
- All were satisfied with this new definition
- Rule becomes solidly established over the next 150 years
- American jurisdictions added "irresistible impulse"
- Policeman at your elbow theory

## American Law Institute (ALI)

- 1962 ALI published model penal code
- Insanity Defense "Not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform to the requirements of the law."

## ALI Definition

- Addressed both cognitive (appreciate) and volitional (conform) prongs
- Eventually adopted by Feds and some states
- 1981 - Hinkley tries to assassinate President Reagan
- 1982 Acquittal under ALI definition - followed by public outrage

## Insanity Reform Act of 1984

- Congress established a statutory defense of insanity for federal trials
- Return to M'Naughten
- Retained "appreciate" from ALI
- Inability to control (volition) was gone
- American Bar Assn and ApA suggested insufficient evidence to support volition

## Hinckley Backlash

- States experimented with guilty but mentally ill - wanted to narrow the insanity defense
- Moved burden of proof to the defense
- Montana, Idaho, Utah and then Kansas became the fourth state to go with Mens Rea
- Raymond L. Spring - Washburn Law Professor & past Dean persuaded legislature that jury confusion would be eliminated by going with the new approach 1995 K.S.A. 22-3220

## Mens Rea

- Guilty Mind - a culpable mental state
- Establishes criminal responsibility
- State bears burden of proving mens rea
- US Supreme Court has upheld mens rea issues in Montana - not ruled directly on mens rea but State Supreme Courts of Idaho, Montana, Utah and Kansas found it constitutional.

## Stats

- Insanity defense offered in 2% of criminal trials
- Successful in only 10% of those
- It is rare
- In Kansas, verdict triggers automatic hospitalization

## Challenge

- State v. Bethel 66 P.3d 840 (Kan 2003)
- Supreme court upheld that abolishing insanity defense did not violate due process
- Some feel this was erroneous on the part of the Court
- Reality is that it for practical purposes abolished insanity as a defense in KS

## Kansas Case

- February 2000 Girard Kansas
- 911 call - three victims - all shot
- John Bethel admitted shooting his father, a nurse and another victim who happened to be in the house
- Drug induced psychosis and major depression - not definitive on paranoid schizophrenia

## Bethel

- Found guilty on 2 counts premeditated murder and 1 count capital murder
- 2 fifty year terms sequential and 1 fifty yr concurrent = 100 years in prison
- Could have plead insanity if it still existed - asserted it was a fundamental principal of our justice system
- Appealed to US Supreme Court which was denied

## Interpretation

- If you shoot someone and know you are shooting a person then you have mens rea
- It is irrelevant that you were delusional and thought you were in a war zone and that this fellow was going to kill you
- If you knew you were killing a human being then it is murder

## Mens Rea is Lacking

- A person squeezes their hands tightly together believing that they are squeezing a lemon
- They are in reality strangling a human
- This would meet the defense criteria and mens rea would be lacking

## Guardianship

- Delegation, by the state, of authority over an individual's person or estate to another party
- Can be limited to respect autonomy
- General (plenary) or specific
- Guardian for person
- Competency to make treatment decisions
- Conservator (or committee) for estate

### Guardianship

- Hearings often lack procedural rigor
- If granted, does not expire and burden is on individual to initiate restoration proceedings if change is sought
- Procedural laxity is matched only by the ambiguity of specific standards
- Focus is on functional approach not mental status or diagnosis

### Guardianship

- Detailed evaluation of specific functions
- Necessary in limited guardianships
- Note less restrictive alternatives
- Some formal tests available
- Community Competency Scale
  - Real life survival skills
  - 16 areas, judgment, emergencies, manage money, communicate, memory

### Juvenile Waived to Adult

- K.S.A. 38-1636
- 8 factors considered
- Seriousness of the alleged offense and whether protection of the community is an issue
- Committed in an aggressive, violent, premeditated or willful manner
- Against person or property

### Juvenile Waived to Adult

- Number of previous and unadjudicated offenses pending
- Previous history of respondent - prior offender, antisocial behavior or violence
- Sophistication or maturity of respondent as determined by consideration of home, environment, emotional attitude, pattern of living or desire to be treated as an adult

### Juvenile Waived to Adult

- Whether facilities or programs available to the Court are likely to rehabilitate prior to expiration of Court's jurisdiction
- Whether the interests of respondent or community would be best served by criminal prosecution or extended jurisdiction juvenile prosecution

### Considerations

- Status offenders
  - Youth under court jurisdiction because of acts that would not be criminal if committed by an adult
  - Runaways
  - Curfew violations
  - Tobacco or alcohol possession / use
- May signal other problems than delinquency

Q: How old is your son, the one living with you?

A: Thirty-eight or thirty-five, I can't remember which.

Q: How long has he lived with you?

A: Forty-five years.

Q: What was the first thing your husband said to you when he woke up that morning?

A: He said, "Where am I, Cathy?"

Q: And why did that upset you?

A: My name is Susan.

## "Psychological Evaluations"

- A lack of communication
- Courts order a "psychological evaluation"
- Costs ranged from \$40 to "thousands"
- Judges upset that their intent was not met
- Effort to categorize and specify types of evaluations so that what the courts wanted they received

## "Psychological Evaluations"

- "Years in the making"
- Finally received approval though Johnson County Administrative Judge
- Helps all parties know what to expect
- Consumer friendly
- Remains a system in process and not perfect but better than what was available
- Improves communication

## Handout

- Psychological Evaluation Handout
- Johnson County Courts
- Some municipal courts also using it
- Spreading slowly

Q: Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?

Q: The youngest son, the twenty-three year old, how old is he?

Q: Were you present when your picture was taken?

## Communicating with the Courts

- Successful translation of clinical knowledge into a legally useful form
- Formal
- Informal
- Conclusion - expert opinion
- Provide data for Court to reach a decision
- Clinicians are advocates of the DATA
- Timeliness

### Experts never win or lose

- As an effective advocate of the data you may be called by either side or involved by the Court itself.
- Even though you may be called by one side you are not ON that side
- Psychologists aid the trier of fact in coming to the most appropriate conclusion

### Know the RULES

- In order to be effective you must understand court procedure & parlance
- You must understand the system
- Know the players or find out about them
- Let the attorneys involved know about you

### Sharing Information

- This happens in stages
- Help the attorney craft his line of questions to you so as to best explain the data in an accurate and understandable way
- Preliminary consultation
- Preliminary report of findings
- Written report

### The Report

- If you write a good report, your chances of having to testify decrease significantly
- You may have to show up anyway because most of the time your report is not admissible unless you are there to cross examine

### Written Report

- Be accurate (dates, times, spelling, etc)
- Separate facts from inferences and assumptions - just because they told you they did something doesn't mean it happened - "Mr. X reports that he ..."
- Unless you know it to be true do not say it in a way that can be interpreted as such

### Written Report

- Stay within the scope of the referral
- If it is a question of competence to stand trial - do not make comments about the presence of a personality disorder
- Avoid information overload - in rare cases a long and detailed report is necessary - most times it is not and the reader (and your message) gets lost

## Written Report

- Provide enough information
- Just a conclusion without leading the reader along your path of thinking inspires skepticism and mistrust and you come off as simply drawing conclusions
- The report should state the information necessary, lead the reader along your thinking and make sense when you get to the end as to how you got there

## Written Report

- Find out who the audience is - use language expected by the audience
- Attorneys, judges and juries do not necessarily understand psychological jargon and it should be avoided
- Your expertise shines through when you are able to explain complex concepts in ways others understand them

## Direct Testimony

- Voir Dire - qualifying as an expert
- Have your vita in front of you
- 4 copies of everything
  - Judge
  - Prosecutor
  - Defense
  - You

## Voir Dire

- Attorney should step you through it
- Formal, education
- Practical experience
- Professional licenses/certifications
- Professional memberships
- Publications
- Prior court /legal / forensic experience

## Voir Dire

- Opposing atty questions
- Ask directly about what you cannot do
- Ask about only doing defense work
- Does testimony only favor one outcome
- Frequency questions
- Question expertise / decrease trustworthiness
- Once you are known this may be waived

## Direct Testimony

- Inverted pyramid
  - Explain assessment process
  - Describe data produced
  - Inferences and uncertainty
  - Summary conclusion
- Preparation of the atty is key
- Educate him on how to elicit the information that should come out

### Direct Testimony

- Style differences
- "Tell us Doctor....."
  - Psychologist does all the work
  - Less prepared attys
- Series of questions style
  - Well chosen questions to simplify information
  - Psychologist usually responds "Yes"
- Some combination of the two styles

### Cross - Examination

- This is how you learn
- Learn to improve your process from the start - wording on forms - what you say - what you don't say - everything that has happened prior to the testimony and how you respond to testimony
- Consider it an education from someone who charges hundreds of dollars an hour
- They may seek you out in the future

### Cross - Examination

- PREPARE, PREPARE, PREPARE
- If you anticipate a highly adversarial experience then prepare even more
- Tab your file - organize your papers
- Re-read your deposition if it was taken
- Prepare responses to what may seem contradictory answers

### Cross - Examination

- Remember - you are there for the DATA
- Not on anyone's side
- Acknowledge controversial points
- Concede indefensible ones
- This builds your credibility - you truly become seen as an expert the Court relies on rather than a hired gun for one side

### Cross - Examination

- You are an educated person
- The attorneys are educated
- They may have spent just as much time preparing as you did - do not underestimate them
- They hired a psychologist to coach them on what they don't know and to write specific questions
- Concede the limits of your testimony
- If you are out on a limb - they will quickly saw it off for you

### Cross - Examination

- Confusion vs Stupidity
  - Doctor, we're talking about schizophrenia here. Can you help me understand in clear and simple terms what schizophrenia is and what really causes it?
  - Is there a clear and simple answer?
  - Atty usually will make a face and give verbal clues that you have failed his task no matter what your answer

## Confusion vs Stupidity

- State that it is a complex topic
- Narrow the focus
- Admit ignorance while appearing well informed
- "But doctor what about the Smith study?"
- The studies having the most relevance here are by Jones. I'm not familiar with the study you cite but would be happy to review it during a recess

Q: Doctor, before you performed the autopsy, did you check for a pulse?

A: No.

Q: Did you check for blood pressure?

A: No.

Q: Did you check for breathing?

A: No.

Q: So, then it is possible that the patient was alive when you began the autopsy?

A: No.

Q: How can you be so sure, doctor?

A: Because his brain was sitting in a jar on my desk.

Q: But could the patient have been alive, nevertheless?

A: Yes, it is possible that he could have been alive and practicing law somewhere.

## Yes or No Questions

- Doctor, aren't predictions of dangerousness highly inaccurate?
- Cuts you off - a simple yes or no please
- Explain that a yes or no answer would be inappropriate to the question and possibly misleading
- Appeal to the judge if he insists

## Focus on Uncertainty

- Hasn't the validity of that test been questioned in the literature?
- Explain how no test is perfectly valid
- That is why multiple tests are used and that all of the information as a whole should be considered not just one specific test
- Isn't diagnosis unreliable in this area - if I ask 3 doctors might I get 3 different answers?
- Correct misstatements - DSM IV TR criteria

## Subjective Opinion

- Doctor, you emphasize the importance of research. Have you been involved in research or undertaken an investigation into the reliability and validity of your clinical opinions and judgments or is this just, as you have said, subjective opinion
- Discuss scientific process and training, awareness of own values in interpreting data, etc. Doing this is part of our training

## But others say....

- Learned treatise approach
- Has you confirm that journals or authors are authoritative
- Atty quotes published research to the contrary of experts opinion
- Refuse to acknowledge source as authority - risky
- Deal with the contradictions - best way

## Learned Treatise Approach

- Alert Court to possible misuse of source
- Highlights the importance of training in this area to properly interpret findings
- Atty steps you through point by point - even having you read some of it then, asks if it is a plausible alternative to your opinion
- Be familiar with what is out there so you can use it properly

## Juror Studies

- Defense experts seen as less credible than prosecution experts
- Often seen as hired guns - making large sums of money while prosecution experts were on salary from the state
- Viewed as not having spent much time on the case
- Saw the defendant only shortly before trial
- Appear pompous and self centered

## Juror Studies

- If the case was thought by the jury to be a novel claim or frivolous, then plaintiffs' experts were seen as less believable than experts for the defense

## Juror Views of Defense Experts

- Made no effort to relate their testimony to the rest of the evidence offered
- Popped into the courtroom from a busy schedule and were isolated from the rest of the case
- Sometimes felt they knew more about the area than the expert i.e. alcohol / drug use - jurors tend to believe their own knowledge rather than experts when they conflict

## Juror Studies

- Clarity of presentation, familiarity with the facts of the case and impartiality were more important than educational credentials, appearance and personality although the latter were not unimportant

## Impression Management

- Dress appropriately
  - Conservative suite or coat and tie
- Familiarity with Courtroom Protocol
  - Act like you've been there before - know where to go, what to do, show confidence
- Speak to the Jury or Judge
  - Eye contact, word choice
  - Fluid conversational tone
  - Clear and confident voice

## Impression Management

- Maintain Composure
- Pause - use what you know
- Smile in the face of hostility
  - Lets jury know you view this as a tactic
- Be polite and respectful
- Do not appear apologetic
- Ask atty to repeat or clarify question

## Ultimate Question Issues

- "But I thought that was the Judge's job"
- Let the Court do its job and you do yours
- Are you offering an opinion on whether someone's freedom should be restricted OR are you describing threatening behaviors made by the defendant and the unsuccessful treatment attempts in the past as well as an informed opinion based on research as to his amenability to treatment in the future
- Judge or jury is the finder of fact - not you

Q: Are you qualified to give a urine sample?

Q: So the date of conception of the baby was August 8th?

A: Yes.

Q: And what were you doing at the time?

Q: She had three children, right?

A: Yes.

Q: How many were boys?

A: None.

Q: Were there any girls?

## Ultimate Question Issues

- Not to say that it is never appropriate
- Competency to stand trial as an example
- There are times when you offer opinions based on reasonable scientific certainty
- Use the language of the law in your opinion

## Ultimate Question Issues

- If the law says that a juvenile can be waived to adult status if A, B and C are met.
- Focus your testimony on A, B and C
- The court will then take that into account when deciding if the juvenile should be waived

Q: Can you describe the individual?

A: He was about medium height and had a beard.

Q: Was this a male, or a female?

Q: Is your appearance here this morning pursuant to a deposition notice which I sent your attorney?

A: No, this is how I dress when I go to work.

Q: Doctor, how many autopsies have you performed on dead people?

A: All my autopsies are performed on dead people.

Q: All your responses must be oral, OK? What school did you go to?

A: Oral.

### Assessment Terms

- Response Bias
  - Systematic responding to test items in a specific way
  - Socially desirable or extreme responding would be an example

### Assessment Terms

- Malingering
  - Intentional and conscious exaggeration or fabrication of symptoms toward achieving a goal
  - Intentional and conscious suppression of true ability toward achieving a goal
  - Goal may be external (disability) or internal (patient role)
  - Malingering and genuine mental or physical illness are not mutually exclusive

### Assessment Terms

- Defensiveness
  - Intentional and conscious denial or minimization of symptoms toward achieving a goal (deceiving others)
  - Does not include unconscious process which may be based in facilitating adaptation or mental illness (self deception)

### What can be at stake

- Over 3.5 million SS/SSDI evals each year
- About 4 million people receive SS/SSDI checks each month
- Each year between 25-30% of those are based on a mental disorder excluding MR

### Lees-Haley 1997

- 131 litigating and 315 non-litigating patients
- Litigating described themselves as higher functioning and more satisfied pre-injury than did controls
- Litigating described themselves as lower functioning post-incident than did non-litigating controls
- Perhaps this makes sense - those who lose more may be more likely to litigate

### Do not underestimate those whom you examine

Some people can manipulate their presentations in an extreme fashion  
Carol Burnett / Tracy Ulman move from character to character in the same scene  
"Mind of a murderer" where multiple personalities were fabricated

### Attorneys.....

- Boat capsizes - Aleutian Enterprise
- 20 on board bring suit and are evaluated
- 3 - atty said I would not need to work again and should not return to work even if I felt able
- 1 told to see a doctor on a weekly basis as it would help his case
- 2 were given specific info on PTSD by their attorneys

### Psychologists

- Do no better than anyone else in determining if someone is lying or telling the truth
- There is no relationship between confidence and accuracy in lie detection among mental health professionals
- Being "sure" doesn't matter

### Base Rates

- Knowledge and use of base rates provides a context for interpreting data
- Knowledge and use of base rates facilitates awareness of error rates in particular scales or measures when applied to particular populations

### Malingering Rates

- Non-forensic 5-8%
- Forensic 10-20%
- Griffin (1996)
  - Created 35 item experimental scale from MMPI & MCMI items
  - Given to SSI/SSDI applicants
  - Permanently disabled persons for whom status was not an issue
  - Inmates told to malingering
  - Inmates told to be honest
  - Disability examiners told to malingering

### Griffin Study

- 95<sup>th</sup> percentile for permanently disabled was a cutoff score of 8
- Using this cutoff - 19% of SSI/SSDI applicants were higher.
- Only 56% of the disability examiners were identified by this cutoff

### Fake bad Scale

- Lees-Haley - Neuropsychologist who worked personal injury litigation cases
- Felt that F scale did not catch malingers
- Items selected on his opinion and some contrasted comparisons he did
- 43 Items

### Fake bad Scale

- Literature focused on RAW scores
- Was not officially part of MMPI-2 so no uniform T-Scores available
- Cutoff of 20
- Too Many false positives
- Higher cutoffs reduced false positives

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### Fake bad Scale

- Univ of Minn Press reviews literature
- U of Minn Press Consultants Recommend adding it to MMPI-2 standard validity scales
- Added to MMPI-2 in late 2006
- Will be in next manual - statement on web page for now
- Dr. Yossef Ben-Porath

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### Interpreting Fake bad Scale

- FBS appears to be a valid measure of exaggerated disability and physiological suffering, most of all in the context of litigated minor head injury.
- Greiffenstein, Fox and Lees-Haley (in press)

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### Interpreting FBS

- Joint Use - use the FBS and MMPI-F family jointly
- F scale detects feigned severe psychopathology and the FBS inflated emotional and somatic suffering

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### Interpreting FBS

- General FBS Threshold
- FBS >22 justifies concerns about symptom validity
- False positive decline as score increases from 20
- Final conclusions depend on score magnitude and moderator variables

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### Interpreting FBS

- Gender and history as moderators
- Scores of 29 and above in females with pre-injury psychiatric histories
- Patients with mental illness can still exaggerate disability

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## Interpreting FBS

- Injury Severity as moderator
- In cases with negative historical and radiological evidence for cerebral dysfunction, lower scores of 23-24 are grounds for suspecting exaggeration
- In severe brain injury with residual neurological signs, use 26 and higher

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## Interpreting FBS

- Medical History as a moderator
- In cases with serious, active medical disease, especially complex and multi-system complaints interpret FBS with caution - use scores of 30+ and consult with a medical colleague is unsure of disease status

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## Interpreting FBS

- General Prohibitions
- Never use FBS alone
- Combine with behavioral observations and other validity test indicators
- Avoid original 1991 cutoff score of 20 due to high false positive rate

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## Interpreting FBS

- A positive FBS score does not rule out the co-existence of genuine problems but it may indicate magnification of problems
- Scores of 30 and above have a 99%-100% probability of indicating promotion of suffering across all settings. Scores above 30 provide the greatest confidence irrespective of gender, medical or psychiatric context

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## Use Caution

- A finding on a validity scale does not in itself indicate malingering nor rule out psychopathology
- Over reporting and psychopathology are not mutually exclusive
- You cannot derive this diagnosis from a test score any more than any other diagnosis from any other test score

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## MMPI-2 Validity Scales

- Threats to validity (Ben-Porath)
  - Non-content based
    - Non responding
    - Random responding
    - Fixed responding
  - Content based
    - Over-reporting (exaggeration, malingering)
    - Under-Reporting (denial, defensive)

## MMPI-2 Validity Scales

- Threats to validity (Ben-Porath)
  - Non-content based
    - Non responding CNS
    - Random responding VRIN
    - Fixed responding TRIN
  - Content based
    - Over-reporting F, F<sub>b</sub>, F<sub>p</sub>, FBS
    - Under-Reporting L, K, S

## MMPI-2 Validity Scales

- L
  - Not true T-Scores on original MMPI
  - T-Scores went higher from original to -2
  - Blatant denial of shortcomings
  - Unlikely moral virtues
    - Clergy candidates

## MMPI-2 Validity Scales

- F
  - Not true T-Scores on original MMPI
  - T-Scores went higher from original to -2
  - Keyed by psychopathology
  - Some items no longer rarely endorsed
  - Up to 50% endorse some items
  - Never use F raw scores - only T-scores for comparisons
  - Front loaded with psychotic symptoms

## MMPI-2 Validity Scales

- F<sub>b</sub>
  - Back half of F (past first 370 items)
  - Keyed by psychopathology
  - Rarely endorsed
  - If 20 pts higher than F then person changed approach to test
  - 100 cutoff general
  - 110 cutoff clinical populations
  - Loaded with emotional dysfunction

## MMPI-2 Validity Scales

- F<sub>p</sub>
  - 27 items rarely endorsed by anyone
  - <20% endorsement
  - Clarifies interpretation of F, F<sub>b</sub>
  - If all F high then over-reporting
  - If F<sub>p</sub> low with F, F<sub>b</sub> high then distress

## MMPI-2 Validity Scales

- VRIN
  - If T-Score >79 then not interpretable
  - Find out why - reading? Language?
  - 6<sup>th</sup> grade
    - Most items are 4<sup>th</sup> grade (80%) some 5<sup>th</sup>
  - Flesh-Kincaid 4.6 grade
  - Audio version available

## MMPI-2 Validity Scales

- TRIN
  - If T-Score >79 then not interpretable
  - True or False noted by letter

## MMPI-2 Validity Scales

- S
  - Superlative
  - Items spread throughout test
  - Normed on pre-employment applicants
  - Extension of K

## MMPI-2 Validity Scales

- CNS - cannot say - left blank
  - Broad cutoff of 30
  - Automated scoring allows more specific cutoffs by scale
  - If <90% then caution about interpreting a lack of pathology
  - If still elevated with an 85% then interpret elevation but use caution in under-reporting severity

## MMPI-2 Validity Scales

- K
  - Possible under-reporting
  - Unreasonably well adjusted
  - K-Correction goes away in RF version
    - Research very consistent that not using K-correction provides at least as good and often better data
    - Paul Meehl's dissertation - Lots of research has used it, but it's time has passed
    - May attenuate clinical scale validity in non-clinical settings

## K Scale

- The more extreme the K score the higher the impact
  - And concern regarding profile validity
- If  $K > 59$  then non-K corrected T-scores will be lower
- If  $K < 41$  then non-K corrected T-scores will be higher

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## K Scale

- Eliminating K impacted elevation less than 10% of the time
- In non-clinical settings, scale 4 shows lower elevation ( $T > 59$ ) rates in 7-14% of cases

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## K Scale

- Eliminating K and Code Types
- Code type either remained the same or became non-defined
- For non-defined code types, classification is highly unstable, providing further indication that non-defined code types should not be interpreted as code types

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## Non-Gendered Norms

- Non-gendered norms do not differ substantially (1/2 standard deviation) from gendered norms
- Men slightly lower on fears
- Women slightly lower on disconstraint
- Otherwise interchangeable
- Use Non-Gendered Norms

## Restructured Clinical (RC)

- Clinical scales unchanged since 1940s
- Left intact in MMPI-2 for continuity
- High inter-correlations due to common factors in scales
- Core constructs idea

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## MMPI-2 RC Scales

- Demoralization
  - "Persistent failure to cope with internally or externally induced stressors....Its characteristic features, not all of which need to be present in any one person, are feelings of impotence, isolation and despair" Frank 1974

## RC Scales

- Captures demoralization separately
- Removes it from other scales leaving "core" clinical components of each scale
- Extremely useful in understanding personality and mood issues apart from the demoralization component

## RC Scales

- RCd Demoralization
  - General dissatisfaction, unhappiness, hopelessness, self-doubt
  - Most strongly associated with suicidal intent - especially above 80
- RC1 Somatic Complaints
  - Self reported neurological, gastrointestinal, and pain related complaints
  - Increased likelihood of psychosocial component of physical illness - especially above 70
- RC2 Low positive emotions
  - Lack of or incapacity to experience positive emotions
  - Core vulnerability factor for depression
  - Very depressed and high on RC2 - candidate for antidepressants

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### RC Scales

- RC3 Cynicism
  - Non self referential belief in human badness (everyone but me)
- RC4 Antisocial Behavior
  - Juvenile misconduct, family problems, substance mis-use/abuse
- RC6 Ideas of persecution
  - Self referential persecutory ideation

### RC Scales

- RC7 Dysfunctional negative emotion
  - Anxiety, irritability, anger, over-sensitivity, vulnerability
- RC8 Aberrant experiences
  - Unusual perceptual and thought processes
- RC9 Hypomanic activation
  - Impulsivity, grandiosity, aggression, generalized activation

### RC Scales

- Scales 5 and 0 don't measure pathology so no RC scale
- 4, 6, and 8 had the most reduction due to demoralization being removed

### Compared to Clinical Scale equivalent - RC Scales show

- Comparable or improved reliability
- Substantially reduced saturation with demoralization
- Substantially reduced inter-correlations
- Comparable or improved convergent validity
- Substantially improved discriminant validity

### This holds true in..

- Mental Health Outpatient settings
- College counseling clinics
- Private practice settings
- Substance abuse treatment centers

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### Restructured Form (RF)

- Due out in Fall
- New Manuals, etc
- Anchored by the RC scales
- Authored by Ben-Porath & Tellegen
- Higher order scales and factor analyzed RC scales
- 338 Items
- 50 Scales

## Revised Validity Scales

- VRIN-r
- TRIN-r
- F-r
  - Endorsed by less than 10% rather than up to 50%
- Fp-r
- FBS-r
  - 30 instead of 43 items - works better
- L-r
- K-r - 14 items instead of 30
- Fs
  - Infrequent somatic - rarely endorsed by large samples of medical pts

## Higher order scales

- EID
  - Emotional internalizing dysfunction
- THD
  - Thought dysfunction
- BXD
  - Behavioral externalizing dysfunction
- Plus current RC scales unchanged

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## Somatic complaint scales

- HPC
  - Head pain complaints
- NUC
  - Neurological complaints
- GIC
  - Gastrointestinal complaints

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## Internalizing Scales

- Suicide death ideation
- Helplessness - hoplessness
- Self-doubt
- Inefficacy
- Cognitive complaints
- Sensitivity - vulnerability
- Stress worry
- Anxiety
- Anger proneness
- Behavior restricting fears
- Multiple specific fears

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## Externalizing scales

- Juvenile conduct problems
- Substance abuse
- Agression
- activation

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## Interpersonal Scales

- Family problmes
- Interpersonal passivity
- Social avoidnce
- Shyness
- Disaffiliativeness

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## Interest Scales

- Aesthetic literary interests
- Mechanical - Physical interests
- Both of these are from the old scale 5

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## Psy 5 - r

- Personality psychopathology five
- Aggressiveness
- Psychoticism
- Disconstraint
- Negative emotionality/neuroticism
- Introversion/positive emotionality

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## RF Form

- Uniform T scores for all but validity and interest scales
- Non-gendered scores
- No K correction
- No overlap on scales
- All info will be published and transparent
- No secret norms or formula

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## Still more to come...2008?

- Adaptable version
- Computer administered
- Length depends on answers
- When answers prevent a scale from reaching clinical levels no more questions from that scale are administered

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## Time For Questions

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