



THE LIMITS OF PSYCHOLOGICAL TESTING IN PARENTAL CAPACITY ASSESSMENT REPORTS: A LITERATURE REVIEW

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Note: This Literature Review provides a summary of general research and should not be relied on for legal advice. Please consult a lawyer if you require legal advice about your specific legal matter.

Summary

The Jane Doe Network asked us to do a literature review of the limitations of psychological tests in the context of Parental Capacity Assessments.¹

Issues

1. Are there issues of gender or cultural bias in applying psychological tests?
2. Are these tests appropriate for use in Parental Capacity Assessments?

Analysis

Issue 1: Are there issues of gender or cultural bias in applying psychological tests?

(i) Gender Bias

1. Psychological testing has the potential to penalize survivors of domestic violence, as some 'standard tests may also measure and confuse psychological distress or dysfunction induced by exposure to domestic violence with personality disorder or psychopathology'.² Survivors often experience 'complex PTSD' and other psychological after effects of violence, the symptoms of which can 'overlap with borderline and paranoid traits'.³
2. There is a body of research indicating that female victims of domestic abuse receive elevations in MMPI-2 (Minnesota Multiphasic Personality Inventory- 2, used in 84% of child custody evaluations)⁴ scales measuring paranoia and schizophrenia.⁵ Morrell et al. (2001) identify that, using the MMPI-2 psychological

¹ We are grateful to the members of the Jane Doe Network who provided feedback on earlier drafts of this Literature Review.

² Saunders, D. G., "Research based recommendations for child custody evaluation practices and policies in cases of intimate partner violence" (2015) 12:1 Journal of Child Custody, 77

³ Ibid., 77

⁴ Hagen, M. A., & Castagna, N., "The real numbers: Psychological testing in custody evaluations" (2001) 32(3) *Professional Psychology: Research and Practice*, 269

⁵ Erickson, N. S., "Use of the MMPI-2 in child custody evaluations involving battered women: What does psychological research tell us?" (2005) 39:1, *Family Law Quarterly*, 97

test, the composite profile 'typically interpreted as a chronic schizophrenia profile' matches the average profile of a female survivor of domestic abuse.⁶

3. Research has indicated a positive relationship between the severity and duration of abuse undergone by a woman and elevations in the previously mentioned MMPI-2 scales,⁷ as well as a decrease in elevations in women who have been out of abusive relationships for some time.⁸ This indicates that such elevations are 'reactive' results of abuse, rather than indications of a woman's long-term psychological profile or parenting abilities.⁹
4. Using psychological tests in isolation is associated with bias against survivors of abuse – Saunders (2015) discusses a 2011 survey of child custody evaluations that found that 16% of evaluators were using general psychological tests such as the MMPI rather than an IPV (intimate partner violence) instrument in Parental Capacity Assessments to assess domestic violence. Evaluators who only used psychological tests had less danger and IPV screening knowledge, and 'were more likely to believe that mothers make false allegations and to award sole or joint custody to the father in a case vignette'.¹⁰
5. In a 2015 study with case vignettes, social workers were the most likely, compared with psychologists and attorneys, to recommend sole rather than joint custody to survivors of violence.¹¹ They were more likely than psychologists to recommend supervised as opposed to unsupervised visits for the abusive father, and to believe that 'IPV is an important factor when making custody visitation decisions and that victims do not tend to make false allegations, alienate children, or hurt them when they resist co-parenting'.¹²
6. According to research by Hynan (2004), the MCMI III psychological test disorder scales (in the context of child custody evaluations) tend to manifest higher scores for woman than for men in the area of 'Histrionic, Narcissistic and Compulsive

⁶ Morrell, J. S., & Rubin, L. J., "The Minnesota Multiphasic Personality Inventory-2, post traumatic stress disorder, and women domestic violence survivors" (2001) 32:2 Professional Psychology: Research and Practice, 32(2), 151

⁷ Erickson, Supra note 4 at 103

⁸ Khan, F. et al, "MMPI-2 profiles of battered women in transition" (1993). 60:1 Journal of Personality Assessment, MMPI-2 profiles of battered women in transition. Journal of Personality Assessment, 60(1), 100

⁹ Erickson, Supra note 4 at 89

¹⁰ Saunders, Supra note 1 at 78

¹¹ Saunders, D. G. et al, "Child custody evaluators' beliefs about domestic abuse allegations" (2011) US Department of Justice

¹² Saunders (2015), Supra note 1 at 82

Personality Disorder scales'.¹³ This gender difference is not supported by information about the actual prevalence of these disorders in women versus men in the USA and Canada.¹⁴

(ii) Cultural Bias

7. Hill et al. (2010) provide an overview of the evidence for cultural bias in the MMPI-2; multiple studies have found 'clinically and statistically significant differences' between the scores of African American and Caucasian individuals, with African Americans over predicted for psychopathology on several scales.¹⁵
8. Pace et al. (2006) looked at the MMPI-2 in relation to 'two distinct American Indian tribes', and found that tribe members received scores that were on average statistically significantly elevated from the MMPI-2 norms.¹⁶ The researchers argue that while some differences may be the result of 'psychological distress spurred by historical oppression and present adversity', they also reflect 'a divergent worldview'.¹⁷ Hill et al. (2010) provide an in depth study of the specific ways in which the MMPI-2 scales pathologize 'beliefs, behaviours, experiences and perceptions that are accepted, valued and considered healthy and important' in the cultural system of tribe members.¹⁸
9. While the studies of Pace et al. (2006) and Hill et al. (2010) are specific to the particular minority group they are focussing on, they reflect the broader issue that 'divergent belief systems viewed from a majority culture perspective may appear to reflect bizarre thought processes as captured by the MMPI-2'.¹⁹

Issue 2: Are these tests appropriate for use in Parental Capacity Assessments?

(i) Validity

10. Standard psychological tests such as the MMPI-2 have 'good psychometric properties' and are established as reliable, but are 'not necessarily relevant to

¹³ Hynan, D. J. "Unsupported gender differences on some personality disorder scales of the Millon Clinical Multiaxial Inventory-III" (2004) 35:1 Professional Psychology: Research and Practice, 106

¹⁴ Hynan, Supra note 12 at 106

¹⁵ Hill, J. S et al, "Decolonizing personality assessment and honoring indigenous voices: A critical examination of the MMPI-2" (2010) 16:1 Cultural Diversity and Ethnic Minority Psychology, 108-9

¹⁶ Pace, T. M et al, "A cultural-contextual perspective on the validity of the MMPI-2 with American Indians" (2006) 12:2 Cultural Diversity and Ethnic Minority Psychology, 327

¹⁷ Ibid., 320

¹⁸ Hill et al, Supra note 14 at 21

¹⁹ Ibid., 17

parenting issues'.²⁰ General psychological tests were not originally designed to measure 'the quality of parenting or coparenting'.²¹ According to Bala (2007), no psychological test has been 'scientifically validated for its predictive reliability for outcomes for children in child-related disputes'.²² This is a stance supported by both Choate et al.²³ and Galatzer-Levy et al.²⁴ There is no scientifically based connection between the items that are measured by such tests and 'substantive issues involved in custody/visitation disputes'.²⁵

(ii) Accuracy

11. Hagan (2008) raises the issue that while it may be possible to describe a statistical correlation between a particular score or profile on a psychological profile and 'future parenting conduct', this is of much less relevance to the wellbeing of the children involved than 'behaviourally based data which ties in more directly to the legal question'.²⁶ Essentially, psychological tests can at best 'generate hypotheses that have to be considered in light of other sources of information' rather than offer 'determinative' information about how capable an individual is of parenting well.²⁷
12. Tests aimed specifically for use in parental assessments have 'little normative data' around them, meaning that 'adequate reliability and validity cannot be established'.²⁸ This is a view shared by Weiner et al.²⁹ Emery (2005) outlines several of the most commonly used child custody specific tests, and indicates that none of them are backed up by sufficient data to qualify as having 'scientific support', and in fact that 'no study examining the properties of these measures has ever been published in a peer reviewed journal'.³⁰
13. General psychological tests other than the MMPI-2 are also lacking in scientific support. A Hagen et al. (2001) study raised the issue of 'standard of practice' in the

²⁰ Rohrbaugh, J.B. *A comprehensive guide to child custody evaluations: Mental health and legal perspectives* (New York: Springer, 2008), 216, 229

²¹ Weiner, I.B. et al, *The handbook of forensic psychology* (Hoboken: Wiley, 2014)

²² Bala, N. "Mohan, Assessments & Expert Evidence: Understanding the Family Law Context" (2007) 07:2 Queens University Legal Studies Research Paper, 28

²³ Choate, P. W. "Parenting capacity assessments in child protection cases" (2009) 18:1 The Forensic Examiner. 54-55

²⁴ Galatzer-Levy, R. M. et al, *The Scientific Basis of Child Custody Decisions* (Hoboken: Wiley, 2010), 87,96

²⁵ Brodzinsky, D. M. "On the use and misuse of psychological testing in child custody evaluations" (1993) 24:2 Professional Psychology: Research and Practice, 214

²⁶ Hagan, L. D., & Hagan, A. C. "Custody evaluations without psychological testing: Prudent practice or fatal flaw?" (2008). 36:1 Journal of Psychiatry & Law, 94

²⁷ Ibid., 95

²⁸ Rohrbaugh, Supra note 19 at 219, 229

²⁹ Weiner et al., Supra note 20 at 156

³⁰ Emery, R. E et al, "A critical assessment of child custody evaluations" (2005) 6:1 Psychological Science in the Public Interest, 8

field of child custody evaluations, and found that none of the tests, with the exception of the MMPI-2, were used by practitioners enough to be consistent with a 'standard of practice'.³¹ Pope et al. discuss the lack of scientific evidence behind such psychological tests, including the Basic Personality Inventory (BPI), Millon Clinical Multiaxial Inventory III (MCMI-III) and Personality Assessment Inventory (PAI).³²

14. Carr et al. (2005) examine the prevalence of self-presentation bias in parents undergoing parental capacity assessments. While the instinct to present as positively as possible under the circumstances is understandable, it has the effect of obscuring 'the data on which conclusions must rest'.³³ Carr et al. found that among the different psychological tests, positive self-presentation compromises the validity of 60% of MMPI-2 profiles, one in five PAI (Personality Assessment Inventory) profiles and 49% of CAPI (Child Abuse Potential Inventory) profiles. There is pervasive positive bias across the tests, and while some assessors may attempt to take it into account, there is evidence that parents whose profiles indicate self-presentation bias are more likely to gain custody than those whose profiles do not.³⁴ Arce (2015) also indicates that the 'standard evaluation of forensic psychologists, based on the standard scoring output on the MMPI-2' is insufficient to fully account for attempts at impression management by parents.³⁵

Conclusion

15. There are serious limitations to the usefulness of psychological testing in parental capacity assessments, which should be considered going forwards. Psychological testing may harm survivors of domestic abuse by misrepresenting the after effects of abuse as indicative of paranoia or schizophrenia. In addition, they may misrepresent members of minority groups with cultural systems that diverge from the majority as having elevated levels of psychological issues. Many of the psychological tests designed specifically for use in parental capacity assessments and general tests other than the MMPI-2 lack data around their accuracy, and do not have scientific support. The MMPI-2 itself should be recognized as a test that is neither specifically designed to evaluate child custody issues, nor a source of

³¹ Hagen et al, supra note 3 at 271

³² Pope, K. S et al., *The MMPI, MMPI-2 & MMPI-A in court: A practical guide for expert witnesses and attorneys* (Washington, DC: American Psychological Association, 2006), 16-17

³³ Carr, G. D., et al. "Evaluating parenting capacity: Validity problems with the MMPI-2, PAI, CAPI, and ratings of child adjustment" (2005) 36:2 Professional Psychology: Research and Practice, 188

³⁴ Ibid., 194

³⁵ Arce, R et al. "Assessing impression management with the MMPI-2 in child custody litigation" (2015) 22:6 Assessment, 775

determinative answers. This does not mean that there are no situations in which psychological testing may be warranted, as both Brodzinsky (1993) and Hagan (2008) outline specific instances (such as evaluating whether a child has a learning disability) where specific psychological tests would be appropriate. They point out that while such tests are not universally applicable, and in some instances can even be harmful, they do have a specific purpose and if used in a limited capacity, the potential to be useful.

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