

Commentary to a Special Series: Forensic Psychodiagnostic Testing

Marvin W. Acklin, PhD

ABSTRACT. This commentary on the special series examines issues raised by the authors and addresses various points of controversy in the field of forensic psychological evaluation. Issues that are reasonably well settled and those that remain controversial are reviewed. The author makes reference to prevailing standards of practice in the field that provide the context for an exciting and intellectually demanding professional discipline. [*Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <getinfo@haworthpressinc.com> Website: <http://www.HaworthPress.com> © 2002 by The Haworth Press, Inc. All rights reserved.*]

KEYWORDS. Forensic use, forensic assessment

The current special series simultaneously addresses current controversies in forensic applications of psychological tests and provides basic guidelines for forensic psychological practice. Criticisms of psychological testing in forensic practice are, of course, nothing new. Faust and Ziskin (1988) have long educated astute attorneys to the scientific and practical limitations of psychological and psychiatric evidence in court. More recently, Grove and Barden (2001), raised serious criticisms in a highly respected and influential journal, assailing the admissibility of certain diagnoses and the use of certain test instruments, notably the Rorschach.

Marvin W. Acklin is in independent practice, Honolulu, HI.
Address correspondence to: Marvin W. Acklin, 850 West Hind Drive, Suite 203,
Honolulu, HA 96821 (E-mail: acklin@hawaii.edu).

Journal of Forensic Psychology Practice, Vol. 2(3) 2002
<http://www.haworthpressinc.com/store/product.asp?sku=J158>
© 2002 by The Haworth Press, Inc. All rights reserved.

Although consistently endorsing the role of psychological and psychiatric evidence in court, the judiciary nevertheless maintains a wary and discriminating eye. While Gacono (this issue) refers to a recent increase in "pseudo-debates" concerning the relevance of various assessment methods or psychological tests, it is my opinion that these debates are not "pseudo" at all, but necessary and expectable consequences of the increasing involvement of psychologists in the courts.

Many commentators note that the increasing involvement of psychologists in forensic matters is based on frustrations and limitations associated with clinical practice under the regime of managed care. While this may be true, viewed in a more positive, progressive light, forensic psychological evaluation is attractive because it is the complete art (*ars completa*) of psychological evaluation, involving a complex and intellectually demanding professional practice. Competent and effective forensic psychological practice requires the integration of basic behavioral science, knowledge of legal standards, understanding of psychological tests and measures, careful and ethical procedures, and the integration of all of this knowledge into appropriate and relevant communication to the court. Knowledge of the professional and legal standards, which form the context of forensic psychological evaluation, is the basis of competence.

Currently, forensic psychologists look to the APA Ethical Guidelines (1992) and Specialty Guidelines for Forensic Psychologists (1991), in addition to standards for psychological test instruments as the organizing standards of practice (APA, 1999; see also Turner et al., 2001). With respect to legal standards, the Federal Rules of Evidence, Frye test, and more recently promulgated Daubert standards, amended by Kumho, provide the legal context for practice. Heilbrun's 1992 article established a prescient and durable set of standards for competent forensic psychological evaluation practice. Each of the authors in this series has previewed their chosen tests in light of these legal and professional standards. Otto and Heilbrun provide a broad overview of the emergent controversies, including training and certification, instrument development, best practice standards, and future directions in the field (Otto & Heilbrun, 2002).

While many areas of behavioral science are in dispute and would not necessarily meet legal muster, in other ways the field of forensic psychological evaluation has rapidly matured. In his introduction, Gacono defines forensic psychological assessment, noting that it is a process, using multiple sources of information, in "performing, testing, and modifying hypotheses" (Gacono, 2000, pp. 194-195). Gacono points to the work of John Monahan (Monahan et al., 2001) as providing a useful guide for structuring forensic psychological assessment procedures. Gacono describes in detail appropriate procedures for assessing historical, dispositional, clinical, and contextual factors in forensic psychological evaluation. The maturing of the field has established, by now, relatively clear standards of clinical practice and admissibility. In my view, the

controversies and criticisms of psychological tests and measures have provoked not only acrimonious debate, but also deeper concern and inquiry concerning the methodological foundations of forensic psychological evaluation. The net effect has yielded a firmer scientific foundation for the discipline. This is healthy for the field of psychological evaluation. As all of the authors in the special series note, the forensic clinician must have a detailed understanding of the scientific and methodological foundations of the test instruments they use. The practicing forensic clinician, using the analogy of the driver of the car as opposed to the mechanic, must not only know what the test is for, but also understand and be able to communicate the underlying behavioral science (what's under the hood). It is generally accepted now, that tests must demonstrate general acceptance of use, adequate reliability and validity, and be appropriately relevant. Schuman (2000) establishes the limits of appropriateness and applicability for psychological tests noting, "No psychological test should be considered for use in the judicial process until its validity is adequately demonstrated by empirical studies. These tests or the tools of psychologists, and as tools, their usefulness is limited by the knowledge, skill, and integrity of the user, as well as the validity of the test. Also, failure of the test developer or the test user to understand and apply the following concepts can lead to abuses of tests and test data: the cultural bias in most psychological tests, the strict adherence to the standardized administration of the test; and the effects of the testing conditions on the results" (section 2.20).

Despite the scientific controversies, it remains the judge's role to be the gatekeeper for admissibility of psychological evidence and the jury to determine its probative value. The National Benchbook, a manual for judges in the area of mental health law, notes, "A mental health expert can provide the court with an opinion as to whether a trial participant has a mental disorder and what impairments such a disorder or its symptoms has produced in that individual, but ultimately it is up to the trier of fact to decide whether they believe the experts, and also if those impairments meet the thresholds required by applicable legal standard" (Parry, p. 40).

Despite criticisms of the Rorschach, Gacono and others have demonstrated its wide admissibility by the courts. Nevertheless, a number of aspects of the forensic application of the Rorschach remain controversial or undeveloped. One area, which applies to all psychological test instruments, is the impact of "adversarial examiner-responder relationship components" as a factor in inference development. Concerning the Rorschach, forensic psychologists are likely to benefit from a deeper Daubert analysis, with particular attention to the third Daubert criterion, namely, rates of error and classification obtained when using the technique.

Otto and McCann address the self-report instruments (MMPI-2 and MCMI-III). Otto contextualizes the MMPI-2 into the universe of assessment instruments that may be used by psychologists in forensic applications. He refers to "forensic assessment instruments," "forensically relevant instruments," and "clinical assessment instruments." He notes, of course, that no psychological test is able to directly measure and establish dispositive conclusions for legal constructs. Otto addresses a number of important issues, including awareness of "setting or context effects that might affect examinee responses," the general acceptance of the MMPI-2 according to Frye standards, but some general weakness "regarding what is known about rates of error and classification that are obtained when using the MMPI-2". The area of special norms is of particular interest and potential controversy in self-report methodologies. Otto concludes that MMPI-2 test users will "do best to think about the instrument as an efficient hypothesis generator that provides leads and direction for further inquiry and investigation." Otto closes with words of warning, noting aspects of inappropriate usage (which has apparently been the most frequent reason for non-admissibility of the test in the court context). Helpfully, Otto cites the relevant Rules of Federal Evidence (401: Relevant; 403: Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time; 702: Testimony by Experts; and 705: Disclosure of Fax or Data Underlying Expert Opinion).

Despite some earlier controversy concerning the MCMI-III's psychometric construction and admissibility (Rogers, Salekin, & Sewell, 1999, p. 200), McCann provides more encouraging news. Though we may not have heard the end of the controversy, McCann's Daubert analysis of the test is compelling. He notes that in regard to Daubert criteria, the MCMI-III is "well-suited for forensic assessment because the primary model for interpreting results has been framed in terms of operator characteristics such as positive predictive power, negative predictor power, sensitivity, and specificity" (p. 9). McCann notes the test's limitations including the fact that the items are face valid and, as such, the test remains prone to some of the limitations inherent in self-report methodology" (p. 13). McCann recommends that experts need to be knowledgeable concerning the test's diagnostic power and operating characteristics.

In their article, Gacono, Loving, Evans, and Junes demonstrate the general adequacy of the Psychoopathy Checklist-Revised, in relationship to several standards: publication and peer review, general acceptance, falsifiability, standardized administration and norms, reliability and validity, and known rate of error. Of particular concern for the Psychoopathy Checklist-Revised is the evaluator's qualifications, and appropriate administration.

It was somewhat surprising to see a section on the forensic assessment application of the Bender-Gestalt Test. Despite the authors' citation of a venerable tradition, including over 1000 published studies, many of these citations are old and may not meet current methodological standards. Furthermore, the

"projective" use of the Bender-Gestalt Test, for deriving personality inferences, appears to me highly questionable. Much more powerful techniques for identifying the presence and localization of cerebral impairment or, alternatively, assessment of personality dispositions are available. It should not be surprising that the Bender-Gestalt Test has lost its rank in recent surveys of test usage (Archer & Newsom, 2000; Quinell & Bow, 2001; Bocacinni & Brodsky, 1999, but compare Camara, Nathan, & Puente, 2000, where the test is ranked 5th). It is rarely used in child custody evaluations (Ackerman & Ackerman, 1997; Quinell & Bow, 2000). I personally found the application of legal standards to the Bender-Gestalt Test unconvincing, and recommend tests that are more broad band in their interpretive yield and may be more universally accepted and applicable for forensic application.

Given the adversarial nature of legal proceedings, it is unlikely that the applicability and admissibility of forensic psychological evaluation evidence will ever become a settled discipline. Many questions about the scientific status of psychological test measures will continue to be addressed. With the maturation of basic standards for forensic psychological evaluation, continuing evolution of the behavioral science foundation, and increasing sophistication of forensic psychologists in their application, forensic psychological evaluation appears here to stay. It is likely to exercise a continuing attraction to assessment psychologists, given its lucrative, risky, and intellectually demanding appeal.

REFERENCES

- Ackerman, M.J., & Ackerman, M.C. (1997). Custody evaluation practices: A survey of experienced professional (Revisited). *Professional Psychology: Research & Practice*, 28, 137-145.
- American Psychological Association Division 41. (1991). Specialty Guidelines for Forensic Psychologists. *Law and Human Behavior*, 15, 655-665.
- American Psychological Association. *Standards for educational and psychological testing*. 2nd edition. Washington, DC: American Psychological Association.
- American Psychological Association. (1992). Ethical guidelines and code of conduct. *American Psychologist*, 47, 1597-1611.
- American Psychological Association. (1999). Guidelines for psychological evaluation in child protection matters. *American Psychologist*, 54, 586-593.
- Archer, R., & Newsom, C.R. (2000). Psychological test usage with adolescent clients: Survey update. *Assessment*, 7, 227-235.
- Camara, W., Nathan, J., & Puente, A. E. (2000). Psychological test usage: Implications for professional psychology. *Professional Psychology: Research & Practice*, 31, 141-154.
- Daubert v. Merrell Dow Pharmaceuticals, 516 U.S. 869 (1995).

- Bocaccini, M. & Brodsky, S. T. (1999). Diagnostic test usage by forensic psychologists in emotional injury cases. *Professional Psychology: Research & Practice*, 30, 253-259.
- Faust, D. & Ziskin, J. (1988). The expert witness in psychology and psychiatry. *Science*, 241, 31-35.
- Frye v. United States, 293 F. 1013 (D.C. Circuit 1923).
- Gacono, C. (2000). Suggestions for the implementation and use of the Psychopathy Checklist in forensic and clinical practice. In CB Gacono (Editor), *The clinical and forensic assessment of psychopathy: A practitioner's guide* (pp. 175-202). Mahwah New Jersey, Lawrence Erlbaum Publishers.
- Grove, W., & Barden, R.C. (2001). Protecting the integrity of the legal system: The Admissibility of Testimony from Mental Health Experts Under *Daubert/Kumho Analyses. Psychology, Public Policy, and Law*, 5, 224-242.
- Heilbrun, K. (1992). The role of psychological testing in forensic assessment. *Law and Human Behavior*, 16, 257-272.
- Kumho Tigher Company, Ltd. v. Carmichael, 119 (S. Ct 1167 1999).
- Monahan, J., Steadman, H., Silver, E., Applebaum, P., Robbins, P., Mulvey, E., Roth, L., Grisso, T., & Banks, S. (2001). *Rethinking risk assessment: The MacArthur study of mental disorder and violence*. New York: Oxford.
- Parry, J. W. (1998). *National Benchmark on Psychiatric and Psychological Evidence and Testimony*. Washington, DC: American Bar Association.
- Quinell, F., & Bow, J. (2000). Psychological tests using child custody evaluations. *Behavioral Sciences and the Law*, 19, 491-501.
- Rogers, R., Salekin, R.T., & Sewell, K.W. (1999). Validation of the Millon clinical multi-axial inventory for axis II disorders: Does it meet the Daubert standard? *Law and Human Behavior*, 23, 425-443.
- Rogers, R., Salekin, R.T., & Sewell, K.W. (2000). The MCMI-III and the Daubert standard: Separating rhetoric from reality. *Law and Human Behavior*, 24, 501-506.
- Schuman, D.W. (2000). *Psychiatric and Psychological Evidence*. Second edition. West Group.
- Turner, S., Demers, S.T., Fox, H.R., & Reed, G.M. (2001). APA guidelines for test user qualifications. *American Psychologist*, 56, 1099-1113.

RECEIVED: 03/28/02
 REVISED: 03/28/02
 ACCEPTED: 03/28/02

Psychodiagnostic Testing in Forensic Psychology: A Commentary

Irving B. Weiner, PhD

ABSTRACT. This article comments on five articles in a series designed to provide some current guidelines concerning the forensic applicability of five widely used psychological tests: the Bender Gestalt Test (BGT), the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), the Millon Clinical Multiaxial Inventory-III (MCMI-III), the Psychopathy Checklist-Revised (PCL-R), and the Rorschach Inkblot Method (RIM). The author's observations and recommendations make a valuable contribution to enhancing the quality and utility of forensic psychological testing. [Article copies available for a fee from *The Haworth Document Delivery Service*: 1-800-HAWORTH. E-mail address: langletrif@haworthpressinc.com Website: <http://www.HaworthPress.com> © 2002 by The Haworth Press, Inc. All rights reserved.]

KEYWORDS. Forensic use, forensic assessment

Surveys demonstrate wide use of standard psychodiagnostic tests in the practice of forensic psychology, and there is general agreement among forensic practitioners that psychological test findings can assist triers-of-fact in making decisions about competency to stand trial, criminal responsibility, per-

Irving B. Weiner is affiliated with the University of South Florida Psychiatry Center and is Clinical Professor of Psychiatry and Behavioral Medicine, University of South Florida, Tampa, Florida.

Address correspondence to: Irving B. Weiner, 13716 Halliford Drive, Tampa, FL 33624 (E-mail: iweiner@hsc.usf.edu).

Journal of Forensic Psychology Practice, Vol. 2(3) 2002

<http://www.haworthpressinc.com/store/product.asp?sku=J158>

© 2002 by The Haworth Press, Inc. All rights reserved.