Cross Examination of Psychological and Psychiatric Experts in Competency Cases

David W. Thompson, Ph.D., ABPP
Clinical Psychology Associates
Burlington, Wisconsin
This workshop will...

• Review critical areas of testimony
• Identify fatal mistakes
• Facilitate evisceration when appropriate
• Provide useful tools
This workshop will not...

- Dwell on basic direct- or cross-examination techniques
- Exhaustively review the topic area
Overview

• Challenging Expert’s Qualifications
• Questioning Expert’s Methods
• Special Topics
  – Dual Roles
  – Children & Young Adolescents
But first...

Psychologist
- Graduate School
- Internship
- Scientist/Practitioner Model
- Board Certification

Psychiatrist
- Medical School
- Internship
- Residency
- Board Certification
APA Ethical Principles and Code of Conduct

• Latest version published in 2002
• Available on-line at www.apa.org/ethics/homepage.html
• Comprehensive
  – Competence
  – Bases for Scientific and Professional Judgements
  – Release of Test Data
Specialty Guidelines for Forensic Psychologists

- Originally published 1991
- Currently under revision
- Aspirational model
- …engaged regularly as experts and represent themselves as such...(p. 656)
- Copy included with handouts
American Academy of Psychiatry & the Law Ethical Guidelines for the Practice of Forensic Psychiatry

https://www.aapl.org/ethics.htm

Included in handouts
American Psychiatric Association’s “The Principles of Medical Ethics”


• Included in handouts
The Errors Experts Make

• Carelessness and Negligence
• Attitude Errors
• Loss of Perspective
• Failure to Come Clean
• Intention to Help

(Greenberg, 2004)
Challenging Qualifications

- Basic licensure
- Advanced Qualifications
- Board Certification
- Experience
Qualifications

• Licensed by Wisconsin Dept. of Regulation & Licensing (s.455, Wis. Stats.)
  – Doctorate
  – National Examination
  – State written and oral examinations
  – Documentation of training & experience

• See 455.02(2m) for exceptions

• See 455.03 Temporary Practice
Advanced Qualifications

• National Register of Health Service Providers in Psychology
  – Verification of credentials
  – Approved internship
  – Supervised practice

• www.nationalregister.org
Board Certification

- Not comparable to physicians
- Vanity Boards
- American Board of Professional Psychology (ABPP)
- Others
Experience

- Psychiatrists
  - Test and measurement courses
  - Training in standardized testing
  - Use of tests

- Psychologists
  - Familiarity with specific CST instruments
Experience

All Experts

- Experience with specific population
- Familiarity with legal criteria and standards
Vanity Boards

- Pay a fee
- Unproctored multiple choice “test”
- Continuously extended grandfathering period
Zoe D. Katze

- Board Certified in Hypnotherapy
- Subsidiary of American Board of Forensic Examiners
Zoe D. Katze

- A fully credentialed cat.
- ABA Journal E-report (*October 25, 2002*).
American Board of Forensic Psychology

- ABPP specialty board
- Credential and ethics review
- Proctored written test
- Work sample review
- Oral examination
Fatal Error

“Board Eligible”

• Term not permitted by ABFP
• See letter from ABFP
Challenging Methods

• Documents reviewed
  – All relevant?
  – Attempt to obtain?

• Testing
  – Testing used?
  – Appropriate tests?
  – Standardized administration?
Challenging Methods

• Specific CST concerns
  – Did expert contact defense attorney?

• Scope of evaluation
  – Limited to court personnel roles?
  – Juvenile waiver?

• Assertions about intellectual functioning
Fatal Error

Billing an insurance company for a forensic evaluation

– Medical vs. legal necessity
– Exception: Some medical competency assessments (DPOA for Healthcare)
General Testing Issues

- Normative samples
- Cross validation
- Psychometric Properties
- Standardized administration
Testing: Use of Projective Tests

• Projective Theory
• Examples:
  – Rorschach Inkblots
  – Thematic Apperception Test (TAT)
  – Projective Drawings
• Lack of empirical support
Testing: Use of Projective Tests

Rorschach
Exner’s Comprehensive System

- Current Controversy--For
  - Norms OK

- Ritzler, Erard, & Pettigrew (2002)
Testing: Use of Projective Tests

Rorschach
Exner’s Comprehensive System

• Current Controversy--Against
  – Norms duplication
  – “Over pathologize”

• Grove, Barden, Garb, & Lilienfeld (2002)
Adult CST Tests

- MacArthur Competence Assessment Tool – Criminal Adjudication (MacCat-Ca)
- Examination of Competence to Stand Trial – Revised (ECST-R)
- Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST*MR)
MacCat-Ca

- Published 1999
- Adults 18 years and older
- Not mentally retarded
- 22 items scored by objective criteria
  - Understanding (Factual Understanding)
  - Reasoning (Assist Counsel)
  - Appreciation (Rational Understanding)
ECST-R

- Published 2004
- Adults 18 years and older
- IQ 60 or above
- Semi-structured & structured interview
  - Consult with counsel
  - Factual Understanding
  - Rational Understanding
- Response style scale
CAST*MR

- Published 1992
- Adults with mental retardation
- Multiple choice format read to subject
  - Basic Legal Concepts
  - Skills to Assist Defense
  - Understanding Case Events
Juvenile CST Tests

- None
- Grisso’s structured interview format
- Juvenile waiver issues
Juvenile CST

- Developmental considerations
- Attention variables
- Capacity
- Abstraction abilities
Summary

• Is the expert properly qualified?
  – Training
  – Credentials
  – Experience

• Were the methods appropriate?
  – Testing?
  – Contact with defense attorney?

• Does the opinion follow from the above?
Questions?

David W. Thompson, Ph.D., ABPP
Clinical Psychology Associates
345 Milwaukee Ave.
Burlington, WI 53105
262-763-9191 x11
dthompson@clinicpsych.com
www.clinicpsych.com