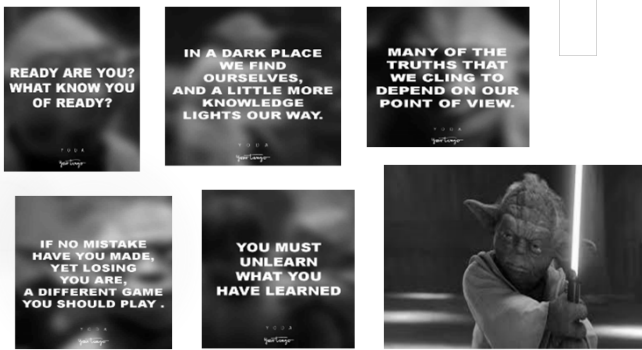


Gender and Forensic Experts: Does it Influence Selection and Outcomes?

NATIONAL ORGANIZATION OF FORENSIC SOCIAL WORKERS
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Overview: It is all about bias

- ▶ Understand role of forensic expert and why we are "at risk" for biases of all kinds, such as cognitive, implicit and gender.
- ▶ The court system – a unique and particular arena for forensic mental health experts.
- ▶ Various forms of bias including Woozles.
- ▶ Gender bias and experts.
- ▶ Debiasing strategies.



I. Family Courts and Forensic Mental Health Experts



Forensic Mental Health Experts

Definition: The application of social work to questions and issues relating to law and legal systems (as defined by the National Organization of Forensic Social Work).

This includes:

Divorce/Parentage/Custody: Child's best interests at stake; AAML
Bounds of Advocacy

Guardianships: The vulnerable adult and/or child

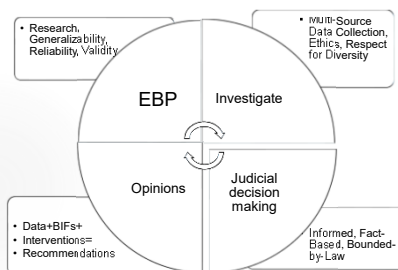
Juvenile/Child Protection: Jeopardy and Parental Terminations

De Facto Parenting/Uniform Parentage Act/Surrogacy/IVF: Evolving and complex forms of family formation

Open or Closed Adoptions: Policy and consequences

Cultural and Poverty Justice: Indian Child Welfare Act (ICWA), UN Convention on the Rights of the Child

A Conceptual Framework: Forensic Expert Synergy



Remember the Arena

- ▶ Family court cases are bench trials-one judge/one fact-finder/one opinion
- ▶ Judges, lawyers, and parents often do not know the difference between forensic experts and clinicians
- ▶ What is the expert's duty to court and family?
- ▶ Expert opinions do matter to family courts but what is reliable or valid?
- ▶ Why do families not get the same standard of science as tort cases?



Family Courts are an "Intentionally Designed" Adversarial System

- ▶ The "host" environment is family courts.
- ▶ Family courts ("We are the government here to help") have pressure to process volume with speed.
- ▶ Family courts have tried to implement reforms but resources are scarcer.
- ▶ Cases are getting more complex and social welfare programs diminishing.
- ▶ Forensic Mental Health Experts (FMHEs) conducting evaluations and opinions serve these competing interests while translating or transforming data and research to family courts.
- ▶ **All this translates into an arena at risk for the introduction of various forms of bias**



As FMHE have you been asked for this opinion?

- | | |
|--|---|
| <ul style="list-style-type: none"> ▶ Natural" bonding "not observed" ▶ Parental alienation syndrome ▶ Personality disorders are intractable and untreatable ▶ Battered women's syndrome ▶ Munchausen-by-proxy ▶ Affluenza defense [remember?] ▶ DSM diagnoses "almost" always impair functional parenting capacity ▶ Psychological testing is an objective assessment of functional parenting ▶ Risk predictions as to recidivism and IPV and child abuse | <ul style="list-style-type: none"> ▶ Which are generalizable and methodologically reliable science for parents? ▶ Which are "fads" or conceptual frameworks yet to be studied? ▶ Which research/testing is <i>normed</i> for a population in family court? ▶ Can experts use tests to ethically opine as "truth detectors"? ▶ Should experts affirmatively state limitations of research or wait for cross-examination? ▶ What risk measures/tools have actuarial data applicable to your case? |
|--|---|
- Which would Pooh recognize as a Woozle?
See below

Forensic Opinions: Science versus Wozzles

- ▶ First mentioned in *Winnie-the-Pooh* (1926) by A. A. Milne.
- ▶ Deceitful, weasel-like animals that live in Hundred Acre Woods.
- ▶ Avid honey stealers, often associated with heffalumps.
- ▶ Most feared creatures by Pooh and friends, especially Piglet.
- ▶ Pooh and Piglet follow what they assume are wozzle footprints to catch a wozzle.
- ▶ When footprints become more numerous, Pooh explains this by revealing that wozzles often travel with wizzles.
- ▶ Later (much later) realize they had been walking in circles, and footsteps were their own.



Wozzles and Courts

- ▶ Courts benefit from methodologically sound research applied forensically with disclosure of reliability, validity, and generalizability in a factual and legal context.
- ▶ Gelles developed concept that when research is misrepresented or misused then false beliefs are perpetuated as alternative research or hypotheses ignored.
- ▶ Research/science can be used to “wozzle” courts into believing things that are not true at all, or only partially true, or have become truth-by-repetition or canon.

See Nielsen, L. (2015). Shared physical custody: Does it benefit most children. *Journal American Academy of Matrimonial Law*, 28, 79-137. Nielsen, L. (2015). Pop goes the wozzle: Being misled by research on child custody and parenting plans. *Journal of Divorce & Remarriage*, 56(8), 595-633.

II. Bias Threats for Forensic Mental Health Experts

THE TOOTHPASTE PERSONALITY TEST



IMPULSIVE,
LIFE OF THE
PARTY



THIRTY,
PHONE TO
DEPRESSION



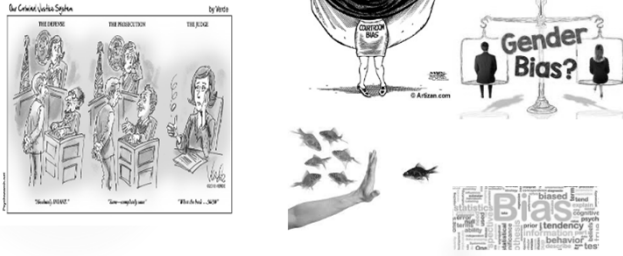
STUBBORN,
SLOW WITTED



ANTI-SOCIAL,
BAD BREATH

©2015

Nothing is Bias Free



Bias Threat: Therapist versus Expert Opinions

- ▶ In one study, *jurors* viewed clinical therapist and forensic testimony as equally scientific but more heavily weighed the therapist testimony in their decision-making (aka the CSI effect)
- ▶ This outcome has been replicated in research, as well as the presenters' anecdotal experiences-even with judges.
- ▶ If clinical-opinion-by-licensure is more influential than forensic testimony, family courts may inadvertently make it easier for clinical opinion to be admitted despite multiple forms of bias and unreliability.
- ▶ This may occur because of the cognitive biases we all have.

Krauss, D. A., & Sales, B. D. (2001). The effects of clinical and scientific expert testimony on juror decision making in capital sentencing. *Psychology, Public Policy, and Law*, 7(2), 267-304.

Cognitive Biases

- ▶ Tendency to make decisions/take action on limited processing of information or on self-interest, overconfidence, or attachment to past experiences.

Two categories:

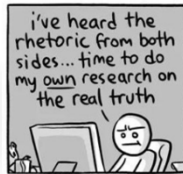
- ▶ Information biases include the use of heuristics, or information-processing *shortcuts*, that produce fast and efficient, though not necessarily accurate, decisions (*Blink: The Power of Thinking Without Thinking* by Gladwell (2005)).
- ▶ *Not paying attention* nor adequately thinking through relevant information.

Confirmation Bias

Confirmation bias is the tendency of people to favor information that confirms their beliefs or hypotheses. People display this bias when they gather or remember information selectively, or when they interpret it in a biased way. The effect is stronger for emotionally charged issues and for deeply entrenched beliefs. People also tend to interpret ambiguous evidence as supporting their existing position.



i've heard the rhetoric from both sides... time to do my own research on the real truth



Google! Exactly detailed topic:
Found 80,000 results.
Literally the first link that agrees with what you already believe
Completely supports your viewpoint without challenging it in any way.
Another link
Does exactly what it says

...jackpot



CHAINSAWSUIT.COM

Bias Threat: Adversarial Bias

- ▶ The implicit rationale for modern special rules for expert testimony is that testimony is uniquely vulnerable to "adversarial bias."
- ▶ Adversarial bias refers to witness bias that arises because a party to an adversarial proceeding retains experts to advance its cause.
- ▶ Adversarial bias has at least three sources:
 - ▶ selection bias
 - ▶ conscious bias (explicit)
 - ▶ unconscious bias (implicit)

Selection vs. Allegiance Effects

- **Selection** effects are when attorneys choose evaluators who have preexisting attitudes that favor their side or only use experts with the more favorable findings to testify versus **allegiance** effects are when retained evaluators (paid by that side) form opinions that favor that side
- Neal (2016) demonstrated that some experts have *preexisting* biases that may affect for whom they are willing to work in the adversarial system—thus, which likely amplifying the effects of the system-induced biases when layered with preexisting expert biases.
- So it is likely that both the adversarial system and the unique characteristics of the person impact expert behaviors..

Neal, T. M. (2016). Are forensic experts already biased before adversarial legal parties hire them? *PLoS one*, 11(4), e0154434.

Murrie, D. C., Boccacini, M. T., Guarnera, L. A., & Rufino, K. A. (2013). Are forensic experts biased by the side that retained them? *Psychological Science*, 0956797613481812.

Bias threat based on unique individual characteristics: Explicit vs. Implicit Biases

- **Explicit bias** like sexism, racism, and other forms of bias have become less prominent and public over the past century (until recently).
- **Implicit bias** affect our understanding, decision making, and behavior, without our even realizing it.
- Implicit bias is driven by **attitudes** and **stereotypes** that we have about social categories, such as gender and race:
 - An **attitude** is an association between some concept (for example, gender) and an evaluative valence, either positive or negative.
 - A **stereotype** is an association between a concept (for example, gender) and a trait.
- Gender biases are likely a combination of both explicit and implicit biases

Kang, J., Bennett, M., Carbado, D., & Casey, P. (2011). Implicit bias in the courtroom. *UCLA Law Review*, 59, 1124-1186.



The power I exert on the court depends on the power of my arguments, not on my gender.

(Sandra Day O'Connor)

izquotes.com

III. Gender and Experts: The literature is complicated and incomplete

- ▶ One of leading researcher is Tess Neal
- ▶ Essential Question: Are women perceived differently from men when they enter court? Bottom-line is Yes.
- ▶ What do we know about this dynamic?
- ▶ Then how to reduce biases so triers of fact look at the power of experts' data and opinions rather than their gender?
- ▶ Does gender bias still occur?

Neal, T. M. S. (2014). Women as expert witnesses: A review of the literature, *Behavioral Sciences and the Law*, 32, 164–179. doi:10.1002/bsl.2113

An Example

- ▶ Research regarding women in academia highlight this as a current issue and suggest may be occurring in legal arena as well.
- ▶ Psychology faculty across the country were asked to evaluate one Curriculum Vitae (CV). The CVs were identical other than some some had a clearly female sounding name vs. a clearly male sounding candidate name.
- ▶ The researchers hypothesized that CVs with male names would be evaluated more favorably CVs with female names.
- ▶ The results confirmed this hypothesis. Psychology faculty members were more likely to state that they would hire the male candidate than the female candidate.

Levinson, J. D., & Young, D. (2010). Implicit gender bias in the legal profession: An empirical study. *Duke Journal Gender Law & Policy*, 18, 1.

Gender and Credibility in the Courtroom

When deconstruct credibility:

- ▶ **Trustworthiness** – perception of listeners (judges and/or jurors) regarding the honesty of witness or belief that witness testimony offered in good faith to inform rather than mislead
- ▶ **Knowledge/expertise** – formal aspects of experience/training (these two equal competence)
- ▶ **Dynamism/presentation style** – related to style and charisma, nonverbal elements and likeability – friendly, respectful, kind, well-mannered and pleasant

These synergistically blend together to determine the expert's credibility.

Brodsky et al (2009), Credibility in the Courtroom

Neal (2014) Women as Expert Witnesses

Melton et al (2007), Psychological Evaluations for the Courts

Findings from Tess Neal (2014)

- ▶ For both males and females, *competence* (trustworthiness/expertise) is an important prerequisite for credibility as an expert witness.
- ▶ However, Neal concluded that male and female experts are judged differently.
- ▶ Both need to attend to gender role expectations to maintain perceived credibility as expert.
- ▶ For males, maintaining high levels of eye contact (“assertive eye contact”) with whomever is asking questions and with the trier of fact is important for credibility.
- ▶ This requirement did not hold for female experts – women were perceived as credible no matter their level of eye contact

Neal Research (continued)

- ▶ *Likeability* appears to be especially important for female experts, but does not appear to be as important for male experts.
- ▶ Studies suggest that female experts are viewed as more credible when they use informal speech, minimize technical jargon, explain key terms, and use the name of the defendant or plaintiff rather than referring to him or her as “the defendant” or “the plaintiff.”
- ▶ Female experts attending to their likeability should also use modest rather than excessively certain statements, be willing to smile on occasion and use inclusive statements (e.g., the words “we” or “us” when discussing members of the scientific community).
- ▶ **Women experts might be mindful of the social psychological literature showing that women leaders are perceived negatively when they adopt masculine characteristics while serving in “masculine” roles.**

Gender Congruency and Expertise

- ▶ A series of studies examined the gender congruency of the case; that is, the congruency between the domain of the case and the experts’ gender.
- ▶ Schuller et al. (2001) presented males and females testifying as experts in a civil antitrust price-fixing case, reflecting either the “masculine” field of construction (i.e., the supply of crushed rock to road construction company) or the “feminine” women’s clothing industry (i.e., supply of fine cotton to a women’s store).
- ▶ The authors expected the female expert to be more persuasive in the female congruent case and the male to be more persuasive in the male congruent case.
- ▶ Consistent with predictions, the male expert was more persuasive in the male-dominated domain, but in the female-dominated domain, there was not a significant difference in damages awards.

Neal, T. (2014). Women as expert witnesses: A review of the literature. *Behavioral sciences & the Law*, 32(2), 164-179.

Advice from Neal's Research

- ▶ Given that expert witness role is traditionally a masculine social role, literature suggests females who adopt the role should demonstrate some feminine traits while in the role.
- ▶ The particulars of how this might look are not well understood.
 - ▶ Might females who wear skirt suits instead of pants be perceived as more feminine, and thus be less likely to be penalized for violating traditional gender roles?
 - ▶ How about females who are deferential and respectful in their speech on the stand?
 - ▶ Or would this "submissive" speech style backfire and impair her perceived competence?
 - ▶ How might the answers to these questions depend, again, on the preferences or biases of the trier of fact?



Effectiveness of Debiasing Strategies

Zappala et al (2018) found:

- ▶ Most experts lack recognition of their biases in comparison with their perceptions of bias in others ("Bias Blind Spot").
- ▶ Most persist in believing that introspection is an effective technique for reducing bias.
- ▶ They concluded: "It is essential for evaluators to find methods that can reduce the potential for bias to influence their work... Bias awareness is necessary for improving clinical decision-making in the field of forensic psychology, and further research on debiasing strategies is an important next step."
- ▶ So what's a Forensic Mental Health Expert to do?

Debiasing Questions to Assist with Maintaining Objectivity

- ▶ How to accept expert role without compromising competency or integrity or independence?
- ▶ How to remain independent of pressure from parents, lawyers, family courts, and state agencies?
- ▶ How to “stick to the data” and avoid transformation of scientific/research knowledge to meet family court expectations and demands?
- ▶ Ensure that the limitations of testing and research based upon race, SES, culture, disability, diversity, or other variables are explained.
- ▶ How to determine if research/opinion is reliable, valid, or generalizable for the purpose for which it may be employed by a court?
- ▶ How to remain a neutral and objective source of data for a fact finder?

In Conclusion

- ▶ Know your role and understand the arena.
- ▶ Be careful, thorough, systematic, and data-driven.
- ▶ Be science/research based and push back against the environmental factors and Woozles.
- ▶ Know why you know what you know in transparent way so show your work
- ▶ Do not assume lawyers and judges will know science or forensic ethics.
- ▶ The potential for bias is pervasive in this arena
 - ▶ Cognitive biases
 - ▶ Implicit and explicit biases
 - ▶ Gender-based implicit biases
- ▶ Be “aware” of own biases (except we know this is not enough)
- ▶ The long-term solution: Gender diversity and the power of “modeling”

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