

A Twilight Melange: Highlights Of Reports and DV

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**Family Law
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What is Forensic Psychology?

- The application of the scientific principles of psychology to legal questions, legal situations and legal problems.

What is Clinical Psychology?

- The application of the scientific principles of psychology to human behavior and relationships.

Forensic v. Clinical

- Is there overlap?
 - From a content perspective, yes.
 - The body of knowledge that is psychology is relevant
 - The science of psychology is relevant
 - Psychological theories or normal and abnormal behavior are relevant
 - From a pragmatic perspective, not as much.
 - No Patient
 - No Diagnosis
 - No Treatment
 - No Intervention
 - No doctor-patient privilege
 - There may be attorney-client work product privilege
 - The work is not used to “help” people. It is used to assist in a legal situation or outcome.

- It is common for psychologists to believe that forensic psychology is simply the application of clinical psychology to legal situations.
- But this means using clinical thinking/reasoning in legal situations. This is inappropriate and can lead to inaccurate, misleading, harmful outcomes.
- It also involves different concepts of client, confidentiality, duty and what it means to “help”.

Psychology as Science

- Reliability:
 - Is the observation, test score, inference repeatable? If observed again, would the same thing be seen again?
- Validity:
 - Does the test/construct/observation measure or assess what it is supposed to measure or assess?
 - Major issue with psychological tests
 - Often what attorneys and Courts think of as “reliable” data

Critical Differences Between Forensic and Clinical Psychology

- Voluntary v. Involuntary
 - Individuals being assessed in a forensic context are not there voluntarily.
 - They cannot consent.
 - They can only assent.

- Who is the client?
 - In clinical work, the client is the individual or family or couple. Responsibility runs to the individual, family or couple.
 - In forensic work, the client is the Court. Thus, the individual or family being assessed is NOT the client! Responsibility runs to the Court.

- Nature of the Data
 - Clinical data can be subjective, intuitive, idiosyncratic. (The data is under the control of the individual client)
 - Forensic data are objective, empirical, subject to verification, subject to discovery, not under the control of the individual.

- Knowledge of Evidentiary Standards, Law, Procedural Rules.
 - In clinical work rules of evidence, procedural rules are irrelevant. Legal knowledge is with regard to privacy, mandated reporting, etc.
 - In forensic work, the practitioner must know a good deal of relevant law, local rules, procedural standards, and rules of evidence as it applies to scientific expert witness testimony.

- The Nature of Hypothesis Testing

- In clinical work, hypotheses are generated with the client and in an attempt to help the client. They are tested/evaluated using subjective data, objective data, client feedback and agreement.
- In forensic work, hypotheses are generated by the psychologist, the evaluatee is likely unaware of the hypotheses. They are tested using objective, empirical data and not subject to client feedback and agreement.

- Privacy/Confidentiality
 - In clinical work, with certain specific and very limited exceptions, the work is entirely confidential. The client, who is the patient, owns the data and controls the data.
 - In forensic work, there is no confidentiality or privacy. Everything is transparent, discoverable. The evaluatee does not own control over the data or its use.

- Control Over The Use of the Data
 - In clinical work, the client has control over how the data is used, interpreted, understood and applied.
 - In forensic work, the evaluatee has no control over how he data is used, interpreted, understood, applied.

Family Reports

What are we Evaluating?

- Best Interests of the Child
- Family' s Relationships
- Child' s Functioning and Needs
- Parental Capacities Strengths / Weaknesses (Vertical)
- Co-Parenting Relationship (Horizontal)

- Relevant Factors
- Special Issues or Allegations
 - Domestic Violence
 - Relocation
 - Alienation
 - Mental Illness
 - Drugs/Alcohol
- Support for the Child's Relationship with the Other Parent
- Logistical Issues (Transportation/Distance/Work Schedules/School Schedules)

Why Appoint a Neutral Expert?

◆ Aid to judicial fact-finding:

- ◆ Holistic, neutral overview of family functioning
- ◆ Make advisory recommendations to the Court
- ◆ Reaction to excesses and suspicion of party paid experts

◆ Promote settlement:

- ◆ Parents can accept report writer's views
- ◆ Provide support for lawyers advice
- ◆ Potential preview of judicial ruling

Who is an “Expert” ?

- ◆ Qualified by “knowledge, skill, experience, training or education”
- ◆ Expert has specialized knowledge within their broader field
- ◆ Greater knowledge than lay person makes opinions “useful” to fact finder
- ◆ Weight of expert opinion is up to finder of fact

Criteria for Expert Opinions

- ◆ Must assist the court to understand the evidence or to determine a fact in issue
 - ◆ The job of the expert is to assist the trier of fact
- ◆ May be in the form of an opinion and must be based on:
 1. Sufficient facts or data
 2. The product and application of reliable principles and methods
 3. The principles and methods are applied reliably to the facts of the case
 4. The expert's opinion is the result of multi-method and multi-modal investigation.
 5. The expert's stance is neutral, non-aligned and non-invested in case outcome

Good report writer Traits

(with thanks to Boy Scout Oath)

- **TRUSTWORTHY**

- report writers must be trustworthy, telling the truth, the whole truth and nothing but the truth

- **LOYAL**

- report writers must be loyal to the process and the needs of the court

- **HELPFUL**

- This can be a risk for report writers, if being helpful leads to a crossing of one's role

Good report writer Traits

- **FRIENDLY / COURTEOUS / KIND**

- report writers need to be courteous, provide informed consent to parents, and discuss limits of confidentiality with parents, children, and collateral witnesses

- **OBEDIENT**

- report writers need to be obedient to Court rules, Practice Standards and Guidelines, Professional Ethics Codes.

Good report writer Traits

💧 BRAVE

- 💧 report writers need to bravely tell the truth, good or bad, about parents and their strengths and weaknesses as parents

💧 CLEAN

- 💧 report writers must be aware of biases and work to avoid interference by them, especially if we don't like a particular parent

💧 REVERENT

- 💧 report writers have respect for parents, attorneys, and the court system

Good report writer Traits

- **BE PREPARED**

- report writers must be prepared with the proper mind-set, which includes:
 - A healthy skepticism
 - A search for various truths within family
 - Development of multiple hypotheses
 - Investigative attitude, seeking more details and leaving no stone unturned
 - Disconfirmation, rather than confirmation of what we want to believe
 - A recognition of factors that contribute to suggestibility of children
 - Willingness to be transparent, open

Good Evaluation Model

◆ A typical thorough evaluation includes:

- ◆ Appropriate informed consent
- ◆ Use of a form to gather data; this keeps to a more structured approach
- ◆ Several interviews with each parent
- ◆ Interviews with older children
- ◆ Observations of all children with parents
- ◆ Review of collateral material
- ◆ Contact with relevant collateral sources

◆ Additional Potential Procedures

- ◆ Psychological tests or Parenting questionnaires
- ◆ Child-related questionnaires
- ◆ Home visits

Bad Evaluation Model

- Not enough interviews
- Lack of collateral data
- Lack of reference to empirical literature
- Not knowing enough law
- Lack of appropriate skepticism
- Being a scribe, not an investigator
- If psychological tests are administered, only using one test or using test results to formulate conclusions rather than generate hypotheses

Ugly Evaluation Model

- Choosing not to see some children
- Relying too heavily on any particular data points, including:
 - Children's play
 - Psychological test data
 - Overly focusing on parents' disputes and minimizing children's issues
 - Sample of 1
 - Offering opinions with no basis

Ugly Side of Evaluations

- ◆ report writers who, while trained, still have no idea how to perform evaluations and do very poor job; rely on diagnosis (PAS), do terrible report
- ◆ Those who critique evaluations negatively with no basis or who engage in dual roles with clients
- ◆ Judges who accept report writer recommendations when based on poor protocol, use of non-valid instruments, bias, and/or extremely poor analysis
- ◆ Parents and attorneys who file frivolous allegations and licensing complaints against report writer
- ◆ Litigants and others who use websites and email to besmirch reputation of good judges, children's lawyers counsel and report writers

Domestic Violence

The Relevance of Domestic Violence in Custody Disputes

- Abuse Does Not Necessarily End With Separation
- Overlap Between Child Abuse and Domestic Violence
- Relationship between DV and Empathy
- Children's Exposure to an Inappropriate Role Model
- Undermining of Non-Abusive Parent
- New Relationships Potentially Violent
- Perpetual Litigation as Form of On-Going Abuse

Differentiation Among Types Of Intimate Partner Violence: Current Research

Article by Joan B. Kelly & Michael P. Johnson

Materials by Joan B. Kelly as presented at AFCC Vancouver, May 2008 (Modified slightly by Robert A. Simon for this presentation)

Value Of Differentiation

- Moves away from “one-size-fits-all” paradigm that all intimate partner violence is battering
- Appropriate and sensitive screening instruments can be developed and integrated
- Effect of treatment programs can be tailored to the characteristics of types of violence
- Can lead to the development of appropriate judicial interventions and parenting plans for families with different patterns of violence

Terminology In Domestic Violence

- Domestic Violence, Battering, And Intimate Partner Violence Often Used Interchangeably

Old Terminology

- Battering or Intimate
Terrorism Coercive
- Conflict-Instigated Violence
- Female Violence
- Separation Engendered
Violence

New Terminology

- Coercive Controlling Violence (CCV)
- Situational Couple Violence (SCV)
- Violent Resistance
- Separation Instigated Violence

Classes/Examples Of Domestic Violence

- **Psychological**
 - Cursing, demeaning, yelling, taunting
 - Isolating, coercion, threats of harm
 - Stalking, harassing, inducing fear
- **Physical**
 - Slapping, grabbing, shouting, twisting arm, pulling hair
 - Kicking, punching, biting, throwing objects
 - Choking, using guns & knives, mutilation, burning
- **Sexual**
 - Rape, forced unwanted sexual behaviors, coercion, harassment
- **Financial**
 - Controlling purchases, withholding funds and information

Situational Couple Violence (SCV)

- Power, coercion and control are NOT central dynamics
- Initiated at similar rates by both sexes
 - 9% - 12.2% (men) & 12.4% - 13% (women) annual incidence rates in US and Canada
 - Gender Symmetry
 - Nationally (American) representative random samples of men and women, and community samples

Situational Couple Violence (SCV)

- Conflict escalates into physical violence
- Related to poor management of conflicts and under-developed coping skills but is typically a recurring pattern
- Minor forms of violence most common (pushing, shoving, grabbing)
- Injuries not common, violence contained
- Partners not generally broadly fearful of each other
- Presence of remorse, guilt, self-reproach, regret

Situational Couple Violence (SCV)

- Frequency and time frame vary from once to frequent, past to current
- Generally decreases over time, & with age
- Most likely to stop after separation
- 67% of men and 60% of women reported violence stopped after separation (Canada)

Situational Couple Violence: When Risk Is Higher

- Aggressive, delinquent, antisocial teenagers and young adults
- Higher frequency of violence
- Injuries more common
- Fear (for men and women) associated with higher frequency of violence and injuries
- Initiated at higher rates by women (43%) than men (34%)

Violent Resistance

- Violent resistance of female (and male) victims in response to history of CCV - defending, fighting back, protecting
- In shelter sample, 71 % of women reported responding to CCV with violence of their own
- Gay women respond with violence more often than do straight women in violent relationships

- Protecting self or others from threats and injury is most common reason given for violence
- Women who defend self against attacks are twice as likely to sustain injury as those who do not
- Incidence of violent resistance unknown in

Separation Instigated Violence

- No history of violence in marriage or in other settings prior to violence at separation
- Partner does not report coercive, controlling, or intimidating behaviors
- Violence represents atypical loss of self-control & significant psychological regression
- Generally limited to one or two episodes
- Occurs with both men and women

Separation Instigated Violence: Differences from CCV Perpetrators

- Psychological responses of perpetrators of SCV differ from CCV
 - More often acknowledgement - not denial
 - Perpetrators often embarrassed, ashamed of their behaviors, sometimes bewildered
 - Generally comply with protection orders

Coercive-Controlling Violence (Classic Battering)

- Intimidation, coercion, control, emotional abuse are **central dynamics**
- Primarily male perpetrated (87 - 97 %), but also female perpetrators in married and lesbian relationships
- Incidence of CCV (battering) in large representative samples is **lower** than Situational Couple Violence (SCV)

Coercive-Controlling Violence

- Injuries to victims more frequent and severe compared to SCV
- Denial, minimizing and blame common responses of perpetrators
- Violence more severe for ½ of abuse victims **after** separation, and risk very high
- When violence is severe and chronic, higher likelihood of severe personality disorders

Emotional Abuse and Control in CCV

- Cursing, humiliating, screaming
- Isolation from family and friends
- Checking up on whereabouts / activities
- Monitoring phone calls, mail, receipts
- Threatening to hurt children, pets, others
- False accusations of sexual infidelity
- Victim not given credit cards, checks, money
- Forced sexual acts

Traits of Batterers

- All ethnic, social groups
- Jealous, possessive, demanding
- Poor locus of control
- Low self esteem
- Emotionally dependent
- Explosive personality - anger surges
- Needs to maintain power and control by random violence and threats
- Rationalizes abusive behaviors
- Alcohol-drugs may play major role
- Inability to verbalize feelings

Key Similarities/Differences

| Trait | SCV | SIV | CCV |
|---------------------------------------|-----------------------------------|-----------------------------------|---|
| History of Power and Control Dynamics | None | None | Significant |
| Gender Driven?? | Both Genders Equally Perpetrators | Both Genders Equally Perpetrators | Most likely Male Perpetrators in Heterosexual Couples |
| Risks after Separation | Very low | Low | Much higher - stalking / abduction / homicide risks |
| Impact on Children | Low | Medium | High |

| Likelihood of Undermining Parenting | Very low | Low | Very High |
|---|----------|----------|-----------|
| Likelihood of Needing Supervised Transitions | Very low | Moderate | Very high |
| Likelihood of Needing Sole Decision-Making | Very low | Very low | Very high |
| Children at risk of further trauma after separation | Very low | low | Very high |

Co-Occurrence with Other Dynamics

- Some perpetrators also have co-occurring dynamics, including:
 - Mental health disorders (e.g., Bipolar Disorder, Borderline Personality Disorder, Psychotic Disorders, Impulse Disorders)
 - Substance use / abuse disorders (e.g., drugs, alcohol)
- Even though there may be a co-occurrence with these other dynamics, the disorder is not to be seen as a “cause” of the violence.

Violence Has Many Forms

- Emotional Abuse

- name calling
- degradation
- badgering
- isolation
- controlling
- making someone think they are crazy

- humiliating
- monopolizing of perceptions
- threats to harm or commit suicide
- verbal assaults on one's self-esteem
- constant criticisms

Violence Has Many Forms

- Economic Violence
 - Restricting access to community funds
 - giving an insufficient “allowance” to manage the household
 - having to ask permission to have or use money
 - financially depriving the children in retaliation for a partner’s behavior
 - Many women stay in abusive relationships for fear of becoming homeless or unable to feed the children if they were to leave.

Violence Has Many Forms

- Sexual Violence
 - Controlling, pressuring, and intimidating sexual behavior by one spouse toward the other is considered a form of violence
 - Marital rape
 - being forced to engage in sexual behaviors that are abhorrent
 - being forced to have sex when you don't want to or having unwanted violence as a part of the sex act are all forms of sexual violence
 - Sexual abuse can be more devastating to a woman's self-image than other forms of physical abuse

- Violence is most devastating when several of these patterns are combined.
- There are a few families in which the violence may appear to be mutual
- True mutual violence is fairly rare
- When there is mutual violence:
 - Who is the primary initiator
 - Who lives in more fear
 - Is one person reacting in self-defense to the violence of the other