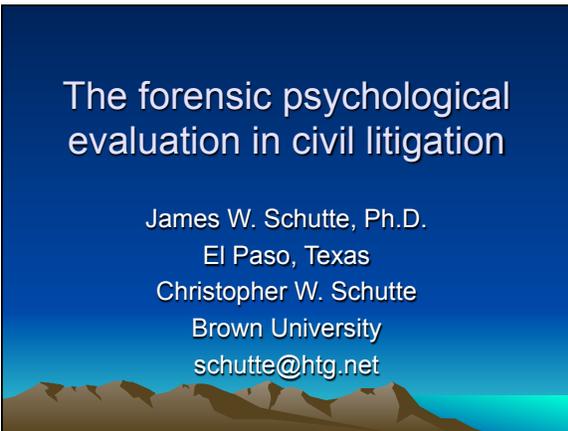


The forensic psychological
evaluation in civil litigation

James W. Schutte, Ph.D.
El Paso, Texas
Christopher W. Schutte
Brown University
schutte@htg.net



Psychologists are often called on in
tort (injury) litigation

- To evaluate a plaintiff for psychological injuries
- To review the evaluation of a fellow psychologist
- To assist in deposition or trial questioning of experts



Certain diagnoses are common in
psychological torts

- PTSD
- Mild Neurocognitive Disorder Due to Traumatic Brain Injury



PTSD in tort litigation

- Criterion A. "Exposure to actual or threatened death, serious injury, or sexual violence"
- Criterion B. "...symptoms...beginning after the traumatic event..."

PTSD in tort litigation

- Criterion C. "...avoidance of stimuli associated with the traumatic event, beginning after the traumatic event(s) occurred..."
- Criterion D. "Negative alterations in cognitions and mood associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred..."

MND due to TBI

- The cause is in the diagnosis
- Criterion B. "There is evidence of a TBI with:
 - Loss of Consciousness
 - Post-Traumatic Amnesia
 - Disorientation and confusion
 - Neurological signs
 - Disorder presents after occurrence or recovery

Mild Neurocognitive Disorder

- Evidence of modest cognitive decline in one or more of these:
 - Complex attention
 - Executive function
 - Learning and memory
 - Language
 - Perceptual-motor
 - Social cognition

Conducting the forensic examination

- The essential questions
 1. Is there anything wrong with the plaintiff?
 - Interview data, test data, records review
 2. If so, was it present prior to the alleged tort?
 - Records review, interview data, test data
 3. If not, was it caused by the tort?
 4. How long will it last?

How long does it take to recover from PTSD?

- Cognitive-Behavioral Therapy should produce improvement in 12-15 sessions
- Pharmacotherapy should produce results in a few weeks
- “Recent research indicates that on average 15 to 20 sessions are required for 50 percent of patients to recover as indicated by self-reported symptom measures”. -APA

How long does it take to recover from TBI?

- Depends on the severity
- Mild TBI
 - Glasgow Coma Scale of 13-15
 - LOC <20-30 mins
 - Negative findings on CT, MRI

Should fully recover within six months



Elements of an adequate evaluation

- Records review
- Interview of the plaintiff
- Testing of the plaintiff



Records to ask for

1. Description of the event (police reports, EMS, witness statements)
2. Acute medical treatment records (ER)
3. Treatment records from the recovery period
4. Current treatment records
5. Mental health treatment records
6. School/vocational records



Records to ask for

- You may not get all you request, but you will likely be asked about anything you did not request

Psychological assessment of a tort

Plaintiff pre-event history

- Education
- Medical
- Mental health
- Occupational
- Disability status

Plaintiff's view of event

The interview

- Symptoms since the event
- Treatment sought
- Response to treatment

What is the difference between a psychologist and a psychiatrist?

- Testing
- Testing
- Testing

If you are only relying on a clinical interview and records review, you are more expensive than an LPC/LCSW, and not as “prestigious” as an MD

Limitations of the clinical interview

- Idiosyncratic questioning
- Non standardized
- Non quantitative
- No objective assessment of response style

Malingering

- Not all plaintiffs malingering, but some do
 - 29%, based on a survey of practitioners (Mittenberg et al., 2003)
- No means of assessing presence, severity, or prognosis in the face of exaggeration

Malingering instruments

- Rey 15-Items Test
- Dot Counting Test
- Test of Memory Malingering (TOMM)
- Validity Indicator Profile (VIP)
- Validity scales of the MMPI-2-RF, MCMI-IV, PAI



Malingering instruments

- Do not rely on just one test, but do not ignore the results of any test
- Be aware of the false-positive statistics of the tests you use



Psychological testing

PTSD (and also MND)

- MMPI-2-RF
- MCMI-IV
- PAI
- TSI-2

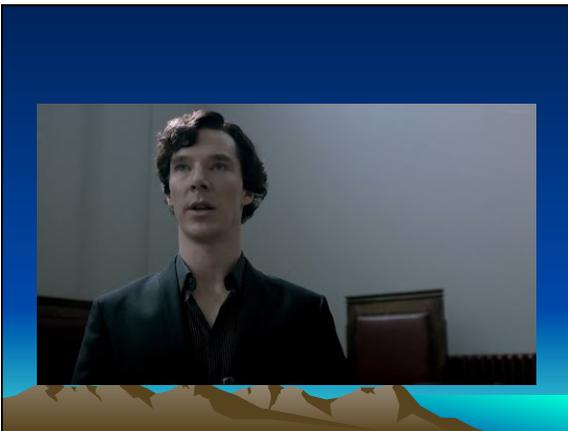


Defending the examination

Don't agree to have exams recorded or observed

- non-standardized administration
- violates test security
- can affect performance
- offer to share raw data with a psychologist





Likely cross-examination questions

1. Whatever you studied/trained was insufficient
2. Whatever you didn't review was critical
3. Whatever you did was insufficient/wrong
4. Whatever you concluded was incorrect



Preparing for cross-examination

- Make sure your C.V. is up to date, particularly membership dues.
- Be aware that some organizations do not list members online
- Young ACFP members, build your CV now. As you get older you will forget more of what you have done than you remember



Preparing for cross-examination

- Make sure you list the records you reviewed, and are prepared to defend this list as being sufficient
- Make sure you can justify your assessment techniques
- Make sure conclusions are based on the data



Preparing for cross examination

- Check your written report for typos, incorrect age computation from DOB, etc.
- In civil cases, all your notes, emails, reports are discoverable
- Why did you do what you did?



Preparing for cross-examination

- If you diagnose with the DSM-5, can you defend that diagnosis?
- If you made up your own diagnosis, can you defend your creation?



Beware of books

- Nothing is “authoritative”

Except (maybe):

- Test manuals for administration and scoring
- DSM-5 for diagnostic codes and criteria



Helping to cross the expert

- Ask for raw data, and check for scoring errors, particularly on the WAIS-IV, MMPI-2-RF
- See which norms were used for neuropsychological testing



Crossing the expert

1. Are you trained to do this?
2. How many times have you done this?
3. Any presentations/publications?
4. How do most people in your field approach this?
5. How long did the exam take? Who conducted the exam?
6. Were the tests scored correctly?

Crossing the expert cont.

7. Is there a source for the test interpretation?
8. Do the diagnoses meet DSM criteria?
9. Is there scientific support for the prognosis and treatment recommendations?
10. Were alternative hypotheses examined?

Crossing the expert cont.

11. Are the tests used appropriate for this plaintiff?
12. Was an interpreter used?
13. If applicable, what are the disadvantages of using abbreviated tests?

Defending your work

- Do not be defensive about your credentials
- You are being paid for your time, not for your opinion
- Whoever gets angry first, loses
- Remember, you know more about psychology than the attorney does
 - Rare to be challenged on stats



Defending your work

- Your job is to carefully develop an opinion, and then defend that opinion
- Don't agree to yes/no answers
- Impossible to say if 'X' would have been helpful, but I had adequate information to form my opinion
- Nothing surprises me in this line of work



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