

# The Newly Adopted Daubert Standard: Implications for Psychological Evaluations in Court

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## I. Introduction

“By replacing Frye’s general acceptance test with the validity standard of Daubert and Rule 702, the Supreme Court took a major step toward integrating the fields of law and psychology... For psychologists who in the past testified more on the basis of clinical consensus than vigorous research, Daubert is likely to constitute a substantial roadblock.”  
(David Faigman, *Psychology, Public Policy, and Law*, Vol. 1(4), Dec 1995, p. 979)

### The Frye Standard, Witch Hunts, and the Recovered Memory Wars:

The Frye Standard provided that expert opinion based on a scientific technique is admissible only where the technique is generally accepted as reliable in the relevant scientific community. (see Appendix A)

### Purpose Statement:

Explore how the newly adopted Daubert Standard and Rule 702 might apply to psychological evaluations and expert testimony in criminal cases in the Arizona Superior Court.

- Today’s talk is not about definitive statements. It is about asking questions. Presentations on Daubert will be much different in the future based on what we learn in the next few years.
- Today’s talk is not about all expert witness testimony in all court venues. It is about psychological experts and evaluations in criminal cases in Arizona Superior Court.

## II. The “What, Who, and How” of Forensic Evaluations

### WHAT is Forensic Psychology?

- “*Forensic*” is from the Latin term “*forensis*” meaning “*Of the court.*” In Ancient Rome, the Forum was where the law courts were located.
- “*Psychology*” is the scientific study of human thought and behavior.
- “*Forensic Psychology*” is the application of the science of psychology to legal questions/issues.

### WHO are Forensic Evaluators?

Doctoral level Psychologists and Psychiatrists . . .

- who have gone through the Arizona Supreme Court training and been certified.
- with formal training in forensics through programs like the American Academy of Forensic Psychology (AAFP) or the American Academy of Psychiatry and the Law (AAPL).
- who are certified by the Arizona Supreme Court and have formal training in forensic programs.

### WHO does the Forensic Evaluator serve?

Most often the trier-of-fact, but sometimes the trier-of-fact. And when all else fails, the trier-of-fact. (See the ethics guidelines for the American Psychological Association, American Psychiatric Association, AAFP, or the AAPL.)

### WHAT kind of assessments do Forensic Evaluators conduct?

Past, Present and Future (*State-of-Mind, Current Competency, and Future Risk*). (see Appendix D)

### HOW does the Evaluator Conduct the Assessment?

Tools of the Trade:

- Psychosocial interview
- Psychological testing (see Appendix E and F)
- Collateral information (prior reports, testing, interviews with family & friends)
- Reference scholarly resources (DSM-IV-TR, research studies, professional training)
- Professional training and experience
- Differential diagnosis (DSM-IV-TR)

### III. Shifting to a New Standard: Daubert

*“From the bar, attorneys are more likely to challenge expert testimony by filing motion in limine and objecting more often at trial to limit or exclude testimony from an opposing expert ... When successful, these efforts often lead to motions for summary judgment. Attorneys also report that Daubert has prompted them to take a more proactive approach in selecting their own experts and preparing for trial testimony...”* (McAuliff & Groscup, in *Psychological Science in the Courtroom: Consensus and Controversy* by Jennifer L. Skeem, Kevin S. Douglas and Scott O. Lilienfeld, May 8, 2009, p. 27)

**Judge is Gatekeeper:** The task of "gatekeeping", or assuring that scientific expert testimony truly proceeds from "scientific knowledge", rests on the trial judge.

**Relevance and Reliability:** This requires the trial judge to ensure that the expert's testimony is "relevant to the task at hand" and that it rests "on a reliable foundation". Put simply, courts applying *Daubert* are encouraged to ask two questions of experts: “*Why should we believe you?*” and “*Why should we care?*” (Dvoskin and Kane, *Evaluation for Personal Injury*, [2011]. Oxford University Press.)

**Scientific knowledge = scientific method/methodology:** *Scientific knowledge* qualifies if it is the product of sound "scientific methodology" derived from the scientific method. The Court defined "scientific methodology" as the process of formulating hypotheses and then conducting experiments to prove or falsify the hypothesis, and provided a nondispositive, nonexclusive, "flexible" test for establishing its "validity":

- A. Empirical testing: the theory or technique must be falsifiable, refutable, and testable.
- B. Subjected to peer review and publication.
- C. Known or potential error rate.
- D. The existence and maintenance of standards and controls concerning its operation.
- E. Degree to which the theory & technique is generally accepted by a relevant scientific community.

#### **A. Formulating Hypotheses and Falsifiability**

(See the next section on Rule 702 for these topics)

#### **B. Subjected to Peer Review and Publication**

Access “PsychINFO” ([www.apa.org](http://www.apa.org)) to do a review of the professional literature on a subject (this is a paid service). You can also check out [www.scholar.google.com](http://www.scholar.google.com) and get many journal articles for free. A consultant can help on this.

#### **C. Known or Potential Error Rate**

**Validity and Reliability.** Psychologists emphasize both “**validity**” and “**reliability**” when talking about research studies or psychological testing.

**Test validity** concerns the test and assessment procedures used in psychological testing and the extent to which these measure what they purport to measure. How much do evidence and theory support the interpretations of test scores? Although classical models divided the concept into various "validities," such as content validity, criterion validity, and construct validity, the modern view is that validity is a single unitary construct.

**Repeatability** or **test-retest reliability** is the variation in measurements taken by a single person or instrument on the same item and under the same conditions. A less-than-perfect test-retest reliability causes **test-retest variability**. Such variability can be caused by, for example, intra-individual variability and intra-observer variability. A measurement may be said to be *repeatable* when this variation is smaller than some agreed limit.

**Error Rate.** When talking about “error rates”, scientists use different **Significance Levels**. For instance – a particular scientific study uses a significance level of at least  $<.05$ . That means that less than 5 times in a hundred attempts to replicate the test will produce different results. The reverse of this equation is the **error rate**. Setting an acceptable error rate accounts for confounding variables or chance. A consultant can help on this.

## **D. Standardized Controls**

### **Psychological Testing**

The use of psychological testing moves the evaluation closer to a scientific standard.

- Reliability is built into the instrument
- Evidence of construct validity
- Standardizes the assessment process
- Idiosyncratic contributions of interviewer are minimized
- Correlated with specific psycho-legal issues in a body of research as opposed a single study
- Clinical prediction, diagnoses, and classifications governed by same decision rules

See Appendix E for a listing of psychological tests categorized by legal questions. Appendix F has a brief description of select psychological tests. An important resource for reviews of psychological testing is the *Mental Measurements Yearbook* by the Buros Institute.

Some questions to ask:

- Who can administer the test?
- Who is the test appropriate for?
- Was the setting the test was given in appropriate? What affect might the environment have had on the individual's responses?
- When did you sample the subject's data? What influence might the time of day had on your subject's responses ?
- Were the instructions followed exactly on the psychological tests used?
- Where were the data gathered? What affect might the environment have had on the individual's responses? Age/gender/discipline of expert on subject? (Negative transference?)
- Psychological tests - which ones? Why? What order? Why?
- Which tests did you hand score? (It's difficult to hand score accurately. Greene, 2007.)

## **E. General Acceptance**

As just mentioned, utilize “**PsychINFO**” ([www.apa.org](http://www.apa.org)) for review of the professional literature on a particular test (this is a paid service). You can also use **scholar.google.com** and get many journal articles for free. Access the **Mental Measurements Yearbook** at the Buros Institute for a succinct description of a psychological test, it's strengths and it's weaknesses.

### **Hiring a Consultant**

- Alerts you to the range of professional competencies demonstrated by the adverse expert, particularly if errors, biases, competencies affected their opinions negatively.
- Help you with a motion for inadmissibility of the expert's work.
- Find appropriate contradictory research.
- Provide alternate testing or interpretation of testing.

### **ASHMCAI**

#### **Concerns about the Arizona State Hospital Modified Competency Assessment Instrument.**

Is there potential for retroactivity? *Griffith v. Kentucky* – 479 U.S. 314 (1987)

## IV. Shifting to a New Standard: Rule 702

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Three different reliable tests were identified by *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 714 (Tex. 1997). Reliability requires the trial court to scrutinize not only the principles and methods used by the expert, but also whether these principles and methods have been properly applied to the facts of the case and any data, studies, or facts that underlie, or form the foundation of, the expert's opinion.

- A. **The testimony is based upon sufficient facts or data (collecting the dots)**
- B. **The testimony is the product of reliable principles and methods (the dots are authentic)**
- C. **The witness applied principles & methods reliably to the facts of the case (connecting the dots).**

### A. The Testimony is Based Upon Sufficient Facts or Data (Collecting the Dots)

#### Knowing the Case

First-and-foremost, the expert has to know about the specific case they are testifying about. Are there details about the case that make it categorically different than the studies being referenced?

The Null Hypothesis (The foundation of science and the American legal system.)

The practice of science involves formulating and testing *hypotheses*, assertions that are capable of being proven false using a test of observed data. The **null hypothesis** typically corresponds to a default position. For example, in a forensic assessment the null hypothesis might be that there is no mental health condition that influenced the instant event. From that position, the evaluator sets out to disprove the null with alternate hypotheses (“*The defendant has a long-standing thought disorder that is reflected in collateral sources. This condition was evident at the time of the instant event.*”).

#### “Confirmatory Bias”

Psychological science has found that **researchers tend to find what they “expect” to find**. This goes by different names: “*Confirmatory Bias*”, the “*Rosenthal Effect*” (“*Pygmalion Effect*”), the “*Rosenthal Effect*” (“*Sane in Insane Places*”), “*Mental Set*”, “*Primacy Effect*”, or “*First Impressions*” dynamic. The forensic evaluator needs to demonstrate they are cognizant of this phenomenon that adversely affects objective decision-making and show reasonable steps have been taken to avoid the various pitfalls. For example - the tendency for information gathering to be influenced by first impressions. There is a natural (albeit it unintentional) tendency to accept the essential accuracy of the fact pattern as it is provided by the retaining attorney or by the defendant. Some questions to ask of the expert:

- Did the gathering of psychological data systematically rule out rival explanations? What contradictory points of data were found?
- Did the forensic evaluator believe retaining counsel told him/her the factual truth about these events? (1st contact bias?)
- There should be evidence that the expert planned what data to gather from which sources. This corroboration could take the form of signed consent forms for collateral contacts, asking for contacts that might have a different story to tell, or asking the subject of the evaluation to bring certain sources of data to the evaluation session.
- What percent of the time does the evaluator produce an opinion/report that is not helpful to the retaining attorney or doesn't fit the theory of the case?

### B. The Product of Reliable Principles & Methods (The Dots are Authentic)

Are the methods used by the expert sufficient to support the opinion offered in a given case? There are three primary sources of principles & methods:

#### 1. Has the forensic evaluator applied the principles of Science?

##### Physical Sciences vs. Social Sciences

Physical sciences take direct measurements while social sciences measurements are almost always “proxies” for the desired information. Human behaviors involve complex multi-factorial causation. Control over all the relevant variables is difficult at best.

### Falsifiability

From Renaissance times the idea of falsifiability has been refined; it means, “*Can you show that your idea is wrong?*” From that emphasis comes the modern method of beginning with the **null hypothesis**. In order to be valid, expert testimony must demonstrate this “show me” attitude in the process of the investigation. To comply behaviorally with the concept of falsifiability, the expert must show an active search for information that might refute the position of the retaining attorney.

## **2. Is there an adequate review of research and use of psychological testing?**

### Acts of Omission vs. Acts of Commission

Often what is missing from the evaluation is more important than what is present. Which studies were not listed? Are there objective psychological tests that could have been applied? Why are these absent from the evaluation? This is where professional consultation can help.

### Review of Research

- As mentioned in the previous section; access “PsychINFO” and scholar.google.com for a review of the professional literature on a subject. A consultant can help on this.
- Who were the subjects? How were they obtained? Random sampling?
- Do these subjects adequately resemble the defendant or victim?
- What was the level of ecological validity? How generalizable are the results of each study?
- Has a study been replicated?

### Psychological Testing

- See Appendix E for a listing of psychological testing categorized by legal questions. Appendix F has a brief description of a number of psychological tests.
- As mentioned, an important resource for reviews of psychological testing is the **Mental Measurements Yearbook** by the Buros Institute.

## **3. Professional training and experience**

Professional training and experience can be a strong guide for the forensic evaluator. But this can also be a source of significant bias. Remember, witch hunters and recovered “memory” experts had years of training and experience.

## **C. Applied the Principles & Methods Reliably to the Facts of the Case. (Connecting the Dots)**

### Law of Parsimony (Occam’s Razor)

“*When you hear hoof beats, think horses not zebras.*” **Occam's razor** (also written as **Ockham's razor**) is the law of parsimony, economy or succinctness. It is a principle urging the scientist to select amongst competing hypotheses which makes the fewest assumptions and thereby offer the simplest explanation of the effect. In applying the rule, one should proceed from simpler theories unless simplicity can be traded for greater explanatory power. A critical question becomes whether the expert adequately accounted for more obvious alternative explanations (i.e. the defendant was drunk at the time of the instant event as compared to a complicated theory involving PTSD and object-relations theory).

### Inferential Leap

Forensic experts/evaluators don’t have the tools to say specifically what happened in the past or to predict exactly what will be in the future. So they make inferential leaps based on the best research, testing, and professional experience.

## V. Additional Direction on Daubert

The Advisory Committee on the Federal Rules of Evidence (2000) added five additional suggested areas of consideration based on court rulings after *Daubert*:

1. Whether experts are “proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying.” *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, (9th Cir., 1995, p. 1317).
2. Whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion.
3. Whether the expert has adequately accounted for obvious alternative explanations.
4. Whether the expert “is being as careful as he would be in his regular professional work outside his paid litigation consulting.” *Sheehan v. Daily Racing Form, Inc.*, (7th Cir., 1997, p. 942).
5. Whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

A leading forensic psychologist, Dr. Joel Dvoskin, shares the following:

It should be noted that the Supreme Court, in *Barefoot v. Estelle* (1983), ruled that the testimony of a psychiatrist on the basis of clinical experience was admissible, because “*the rules of evidence generally extant at the federal and state levels anticipate that relevant, unprivileged evidence should be admitted and its weight left to the fact finder, who would have the benefit of cross-examination and contrary evidence by the opposing party*” (p. 898). Sales and Shuman (2005) suggested that a Texas federal court decision provides criteria that could be used in a *Daubert* analysis of clinical testimony [*Antoine-Tubbs v. Local 513 Air Transp. Div.* (N.D. Texas, 1998):

- personal examination of the plaintiff by the doctor;
- personally taking a detailed medical history from the plaintiff;
- using differential diagnosis and etiology;
- reviewing tests, reports and opinions of other doctors;
- reviewing other facts or data reasonably relied on by medical experts in forming opinions or inferences as to medical causation;
- reference to medical literature; and
- utilizing the doctor’s training and experience.

Similarly, a forensic mental health expert would be expected to do a personal examination, take a detailed history, construct a differential diagnosis, review tests, reports and opinions of relevant clinicians, review information reasonably relied upon by psychological experts in assessing causation, referring to the psychological and medical literature, and utilizing the expert’s training and experience.

**The Gatekeeper.** The Supreme Court made it clear in *Daubert* and its two progeny [*General Electric Company v. Joiner* (1997) and *Kumho Tire Co. v. Carmichael* (1999)] that trial court judges are to exercise their gatekeeping functions. It should be noted, though, that trial judges are not required to question expert testimony. It is up to attorneys to bring *motions in limine* [i.e., a motion to exclude “matters which are irrelevant, inadmissible and prejudicial” (Black’s *Law Dictionary*, 1979, p. 914)] if they wish to have proposed testimony excluded, or to address the proposed testimony during trial testimony.

Put simply, courts applying *Daubert* are encouraged to ask two questions of experts: “*Why should we believe you?*” and “*Why should we care?*” The first speaks to the credibility, reliability, and validity of experts’ opinions and the facts and logic upon which they are based. The second addresses the need for the expert to identify the relevance of the opinions to be offered to the specific questions at bar. Consistent with long traditions of Anglo-American law, this probative value must then be weighed against any prejudicial effects of the opinions to be offered (Dvoskin & Guy, 2008).

(Special thanks to Joel Dvoskin and Andrew Kane, *Evaluation for Personal Injury*, (2011). Oxford University Press. Personal communication to Dr. Simpson)

## VI. Conclusion

*Nothing in all the world is more dangerous than sincere ignorance and conscientious stupidity.*

Martin Luther King, Jr., *Strength to Love*, 1963

In 1718 Bishop Francis Hutchinson wrote about the witch hunts of his day.

*"If the same notions were to prevail again (and superstition is never far off), no man's life would be safe in his own house, for the fantastic doctrines that support the vulgar opinions of witchcraft rob us of all the defenses that God and Nature have placed for our security against false accusations. For in other cases, when wicked or mistaken people charge us with crimes of which we are not guilty, we clear ourselves by showing that at that time we were at home, or in some other place, about our honest business. But in prosecutions for witchcraft, that most natural and just defense is a mere jest; for if any wicked person affirms, or any crackbrained girl imagines, or any lying spirit makes her believe, that she sees any old woman, or other person pursuing her in her visions, the defenders of the vulgar witchcraft tack an imaginary, unproved compact to the deposition, and hang the accused parties for things that they were doing when they were, perhaps, asleep upon their beds, or saying their prayers, or, perhaps, in the accuser's own possession, with double irons upon them. But such fantastic notions are so far from raising their sickly visions into legal evidence, that they are grounded upon the very dregs of pagan and popish superstitions, and leave the lives of innocent men naked without defense against them."*

Rossell Hope Robbins, *The Encyclopedia of Witchcraft and Demonology* (Crown Publishers, Inc., 1959)

### **An Inconvenient Standard.**

Change is often difficult. It is natural for professionals and systems to settle into a tradition of how to do things. There is no question that transitioning to the Daubert Standard and Rule 702 is going to mean more work and careful reflection for forensic evaluators. This will also require more work and strategizing for attorneys to defend their experts and identify weaknesses in the experts brought in by opposing counsel or the court. And take pity on the judges who must sift through new guidelines, review tedious explanations of test validity, error rates, and tortured explorations of Occam's Razor.

But in the end it is not about what is convenient for forensic evaluators, attorneys or judges. Historians estimate that during three centuries of witch hunt crazes over 200,000 people were killed and hundreds of thousands more were tortured and condemned to harsh prison sentences and bodily mutilation. But as measured by the Frye Rule, these were legitimate convictions because there was a strong consensus amongst witch-hunting experts on how to determine someone was a witch. The hunts only came to an end because grotesque legal proofs like Spectral Evidence were able to be legally challenged in courts of law through the application of reason and science. (see Appendix A).

In the 1980s and 1990s, hundreds of civil and criminal cases in American courts were brought against individuals based on the fantasies of patients who had gone through recovered memory therapy. But these legal atrocities were based upon "proofs" and techniques that were accepted as reliable in the therapeutic community and by advocate researchers. As such, the burden of proof met the Frye Standard. It was only after the destruction of thousands of lives – both of patients and those falsely accused – that social scientists were able to demonstrate that recovered memory techniques and the subsequent "memories" of childhood sexual abuse, multigenerational Satanic abuse, trauma in the womb, past-lives regressions and space alien abductions had no basis in science. It is no coincidence that the Federal Courts shift to the Daubert Standard in 1993 corresponded with the introduction of science and reason into trials that successfully refuted the fantastic claims of recovered memory advocates.

In the end, the new standards of Daubert and 702 are not about what is convenient for experts and lawyers. The Arizona Supreme Court's movement towards a higher scientific standard is about justice. Those who are accused of crimes deserve a scientific standard of testimony in court. Victims of crimes deserve a scientific standard of testimony in court. The trier-of-fact deserves a scientific standard of testimony to better assist them in discerning difficult questions that are put before them. To that end, the introduction of Daubert and 702 may prove to be one of the most important evolutionary advances for the Arizona legal community in our new century.

## Appendix A: The *Malleus Maleficarum* and Spectral Evidence

The *Malleus Maleficarum* (Latin for “The Hammer of Witches”, or “Hexenhammer” in German) is one of the most famous medieval treatises on witches. It was written in 1486 by Heinrich Kramer and Jacob Sprenger, and was first published in Germany in 1487. The *Malleus Maleficarum* became the de-facto handbook for witch-hunters and Inquisitors throughout Late Medieval Europe. Between the years 1487 and 1520, it was published thirteen times, and between 1574 to 1669 it was again published sixteen times. The *Malleus Maleficarum* perhaps owes most of its popularity to Johannes Gutenberg. It was the invention of the printing press in the middle of the fifteenth century that allowed the work to spread so rapidly throughout Europe.

The main purpose of the *Malleus* was to attempt to systematically refute arguments claiming that witchcraft does not exist, discredit those who expressed skepticism about its reality, to claim that witches were more often women than men, and to educate magistrates on the procedures that could find them out and convict them. The book became the handbook for secular courts throughout Renaissance Europe, but was not used by the Inquisition, which even cautioned against relying on the work.

Section III is the legal part of the *Malleus* that describes how to prosecute a witch. The arguments are clearly laid for the lay magistrates prosecuting witches. Institoris and Sprenger offer a step-by-step guide to the conduct of a witch trial, from the method of initiating the process and assembling accusations, to the interrogation (including torture) of witnesses, and the formal charging of the accused. Conservative estimates are 200,000 people were executed over the span of 300 years of witch crazes. However, many more individuals were convicted but not sentenced to death – instead having various body parts cut off and given prison sentences as part of their penalty. (Wikipedia and various sources)

### Spectral Evidence

**Spectral evidence** is a form of evidence based upon dreams and visions. It was admitted in court during the Salem witch trials by the appointed chief justice, William Stoughton. The booklet *A Tryal of Witches* taken from a contemporary report of the proceedings of the Bury St. Edmunds witch trial of 1662 became a model for, and was referenced in the Trials when the magistrates were looking for proof that such evidence could be used in a court of law.

Spectral evidence was testimony that the accused witch's spirit (i.e. *spectre*) appeared to the witness in a dream or vision (for example, a black cat or wolf). The dream or vision was admitted as evidence. Thus, witnesses (who were often the accusers) would testify that "Goody Proctor bit, pinched, and almost choked me," and it would be taken as evidence that the accused were responsible for the biting, pinching and choking even though they were elsewhere at the time.

Rev. Cotton Mather argued that it was appropriate to admit spectral evidence into legal proceedings, but cautioned that convictions should not be based on spectral evidence alone as it was possible for the Devil to take the shape of an innocent person. Robert Calef published *More Wonders of the Invisible World* to criticize Mather for this position. Calef also made libelous statements about Cotton and Increase Mather, suggesting that they sexually molested young girls. Upon reading the book, Increase Mather publicly burned the book in Harvard Yard.

Rev. Increase Mather became an opponent of spectral evidence - though not until after the Salem hangings had taken place, and not on the basis that it was false testimony by witnesses, but that it might be a deception by demons. He published *Cases of Conscience Concerning Evil Spirits Personating Men, Witchcrafts, infallible Proofs of Guilt in such as are accused with that Crime.*, in which he argued that "*It were better that ten suspected witches should escape, than that one innocent person should be condemned*". (Wikipedia)



## Appendix B: The Daubert Standard according to Wikipedia

The **Daubert standard** is a rule of evidence regarding the admissibility of expert witnesses' testimony during United States federal legal proceedings. Pursuant to this standard, a party may raise a Daubert motion, which is a special case of motion *in limine* raised before or during trial to exclude the presentation of unqualified evidence to the jury. The **Daubert trilogy** refers to three U.S. Supreme Court cases that articulated the Daubert standard:

- *Daubert v. Merrell Dow Pharmaceuticals*, held that Rule 702 of the Federal Rules of Evidence did not incorporate Frye's "general acceptance" test as a basis for assessing admissibility of scientific expert testimony;
- *General Electric Co. v. Joiner*, which held that abuse-of-discretion standard of review was the proper standard for appellate courts to use in reviewing a trial court's decision of whether expert testimony should be admitted;
- *Kumho Tire Co. v. Carmichael*, which held that the judge's gatekeeping function identified in *Daubert* applies to all expert testimony, including that which is non-scientific.

Two of the most important appellate level opinions that clarify the standard include Judge Kozinski's opinion in *Daubert* on remand (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311 (9th Cir. 1995)), and Judge Becker's opinion in *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717 (3d Cir. 1994). *Weisgram v Marley Co*, 528 US 440 (2000) is also considered a significant case.

In *Daubert*, seven members of the Supreme Court agreed on guidelines for admitting scientific expert testimony:

- **Judge is gatekeeper:** Under Rule 702, the task of "gatekeeping", or assuring that scientific expert testimony truly proceeds from "scientific knowledge", rests on the trial judge.
- **Relevance and reliability:** This requires the trial judge to ensure that the expert's testimony is "relevant to the task at hand" and that it rests "on a reliable foundation". *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 584-587. Concerns about expert testimony cannot be simply referred to the jury as a question of weight. Furthermore, the admissibility of expert testimony is governed by Rule 104(a), not Rule 104(b); thus, the Judge must find it more likely than not that the expert's methods are reliable and reliably applied to the facts at hand.
- **Scientific knowledge = scientific method/methodology:** *Scientific knowledge* qualifies if it is the product of sound "scientific methodology" derived from the scientific method.
- **Factors relevant:** The Court defined "scientific methodology" as the process of formulating hypotheses and then conducting experiments to prove or falsify the hypothesis, and provided a nondispositive, nonexclusive, "flexible" test for establishing its "validity":
  - Empirical testing: the theory or technique must be falsifiable, refutable, and testable.
  - Subjected to peer review and publication.
  - Known or potential error rate.
  - The existence and maintenance of standards and controls concerning its operation.
  - Degree to which the theory and technique is generally accepted by a relevant scientific community.

In 2000, Rule 702 was amended. The rule now reads as follows:

### **Rule 702. Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. (As amended Apr. 17, 2000, eff. Dec. 1, 2000.)

Prior to *Daubert*, relevancy in combination with the *Frye* test were the dominant standards for determining the admissibility of scientific evidence in Federal courts. *Frye* is based on a 1923 Federal Court of appeals ruling involving the admissibility of polygraph evidence. Under *Frye*, the Court based the admissibility of testimony regarding novel scientific evidence on whether it has "gained general acceptance in the particular field in which it belongs." The trial court's gatekeeper role in this respect is typically described as conservative, thus helping to keep pseudoscience out of the courtroom by deferring to those in the field.

In *Daubert*, the Supreme Court ruled that the 1923 *Frye* test was superseded by the 1975 Federal Rules of Evidence, specifically Rule 702 governing expert testimony. Rule 702 originally stated (in its entirety), "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

In *Daubert*, the Court ruled that nothing in the Federal Rules of Evidence governing expert evidence "gives any indication that 'general acceptance' is a necessary precondition to the admissibility of scientific evidence. Moreover, such a rigid standard would be at odds with the Rules' liberal thrust and their general approach of relaxing the traditional barriers to 'opinion' testimony."

## Appendix C

# AZ Supreme Court Adopts Daubert Standard for Expert Witness Testimony after Constitutional Dustup

Emily Ward, *Arizona Law Review*, 9/14/11

For nearly 40 years the Arizona Supreme Court followed the Frye standard governing expert witness testimony. On September 7, 2011, the Court changed this trajectory by amending Arizona Rule of Evidence 702. The Court's decision effectively resolved the lengthy tension between Frye and Daubert in Arizona. Effective January 1, 2012, Arizona will join a majority of other states in following the Daubert standard.

But the Supreme Court's recent amendment was prompted over a year earlier. In April 2010, the Arizona Legislature ignited this debate by enacting the Daubert standard through Senate Bill 1189 (later codified Arizona Revised Statutes section 12-2203). The bill's sponsor defended SB 1189 as a mechanism to make Arizona a "competitive business location." Other members of the legal community noted that Arizona should make the change to Daubert to align with federal courts and improve judicial efficiency.

Although the legislature was well-meaning in enacting section 12-2203, it could not pass constitutional muster. The Arizona Constitution gives the Arizona Supreme Court the exclusive power to promulgate procedural rules. Given this select authority, any procedural statute enacted by the legislature conflicts with the Court's constitutionally vested rulemaking power. Applying the constitutional framework set forth in *Seisenger v. Seibel*, the Arizona Court of Appeals in *Lear v. Fields* held that § 12-2203 violated the separation of powers doctrine.

This Daubert debate prompted the Court to initiate its own independent review of the Rules of Evidence—thereby mooting any separation of powers issue. On March 24, 2010, Chief Justice Rebecca Berch established the Ad Hoc Committee on Rules of Evidence. The Committee's goal was to compare the Arizona and Federal Rules—especially Rule 702. On October 15, the Committee met at the University of Arizona to discuss the merits of retaining Frye or adopting Daubert. After conferring with Professor Thomas Mauet, Deputy County Attorney Kathleen Mayer and Attorney John Canby, the Committee became deadlocked and did not give a definitive recommendation to the Court. From January to May 2011, the Court accepted public comment.

Unlike a formal adjudication, the Court's recent amendment to Rule 702 did not include an analysis for their selection. Rather, the Court's Daubert decision was framed as a 2012 amendment to Rule 702 and only included a Comment about its application.<sup>1</sup>

Professor Mauet commented on the long-term impact of the change:

What will Arizona's change from a Frye jurisdiction to a Daubert jurisdiction mean for trial lawyers? First, the result in most cases, as far as the admissibility of expert witness testimony is concerned, will not change. For example, in personal injury cases, plaintiffs' and defendants' expert medical witnesses, previously admitted under Frye, will also be admissible under Daubert. Second, only in complex cases, such as toxic tort and pharmaceutical cases involving causation issues, will the Daubert requirement of showing that the expert's proposed testimony is sufficiently reliable be an additional hurdle. Third, Arizona will probably go through the same phases as other states that have adopted Daubert. In the first months lawyers may file a number of Daubert motions challenging the admissibility of the other side's expert witness testimony. As courts rule, and lawyers learn that the rulings are much the same as before, the flurry of motions will abate, and life will return largely to how things were before the change.

Notwithstanding the lack of guidance on the Rule's application, the Court's amendment to Rule 702 will still substantially affect how expert testimony is conducted in Arizona. The judge's role as "gatekeeper" of reliability will likely afford many new challenges to existing expert witness testimony.

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1. Comment to 2012 Amendment: "The amendment recognizes that trial courts should serve as gatekeepers in assuring that proposed expert testimony is reliable and thus helpful to the jury's determination of facts at issue... The trial court's gatekeeping function is not intended to replace the adversary system. Cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence."

## Appendix D: Types of Forensic Evaluations in Criminal Cases

### 1. The Past

#### **The Defendant's State-of-Mind at the time of the instant event<sup>1</sup>**

Typically this is a second step taken by the Defense counsel. First the defendant must be found competent to stand trial, and then the defendant/defense raises the affirmative defense of legal insanity in Arizona (“*A mental disease or defect constituting legal insanity is an affirmative defense.*”<sup>2</sup>). This means that a defendant claiming the affirmative defense of insanity carries the burden of proving his or her legal insanity.<sup>3</sup> Placing the burden on a defendant claiming incapacity does not violate due process.<sup>4</sup> Before a defendant may enter an insanity defense, the defendant must be deemed competent to stand trial. Therefore, an evaluator may need to complete a competency determination in order to get to an evaluation of the defendant's mental state at the time of the crime. See Appendix A for A.R.S.§13-502.

#### **Arizona's Insanity Definition**

By statute, Arizona permits a finding of “*guilty except insane.*”<sup>5</sup> A defendant will be determined to be guilty except insane “*if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong.*” A.R.S.§13-502 Arizona courts acknowledge the historical understanding and “*policy of this state*” that an insane defendant may not be responsible for his or her conduct because that person is incapable of conforming his or her behavior to societal norms.

#### **Insanity: Burden of Proof**

The defendant must demonstrate legal insanity by clear and convincing evidence.<sup>6</sup> “Clear and convincing” means “highly probable” and is lower than the “beyond a reasonable doubt” standard required to find a criminal defendant guilty.<sup>7</sup> The “clear and convincing standard”, however, constitutes a higher standard than the civil burden of proof by a “preponderance of the evidence” that requires only proof that something is more likely true than not true.

#### **Exceptions to “Mental Disease or Defect:” Certain Disorders and Conditions**

Personality disorders generally are not included within the umbrella of “mental disease or defect” that constitutes legal insanity. The category of “mental illness or defect” does not include results of acute voluntary intoxication, drug or alcohol withdrawal, character defect, psychosexual disorders or impulse control disorders.<sup>8</sup> Additionally, “mental disease or defect” does not include the following “conditions:” momentary, temporary conditions arising from pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.<sup>9</sup>

#### ***What are some of the resources a forensic evaluator uses to determine state-of-mind?***

Interview with the Defendant, prior mental health service records, prior school records, police reports for the instant event, collateral interviews with family members/roommates, psychological testing, observations by the defense attorney, disability determination by SSI, prior and current jail records, incident reports, video visits, phone records, medical requests written by the defendant, jail status, ConMed records, use of the jail's law library, and commissary requests.

#### ***Can a defendant be mentally ill at the time of the instant event and still not qualify as GEI?***

Yes. Remember that the statute reads, “*the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong.*”<sup>10</sup> The challenge for the Mental Health Evaluator is to determine whether the mental disease was so severe that it precluded the defendant from understanding the wrongfulness of the act.

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<sup>1</sup> Acknowledgements to Judge Nanette Warner.

<sup>2</sup> A.R.S. §13-502(A).

<sup>3</sup> A.R.S. §13-502(C).

<sup>4</sup> *Clark*, 126 S.Ct. 2709.

<sup>5</sup> A.R.S. §13-502(A).

<sup>6</sup> A.R.S. §13-502(C).

<sup>7</sup> *St. v. Roque*, 213 Ariz. 193, 214, 141 P.3d 368, 389 (2006) (en banc).

<sup>8</sup> A.R.S. §13-502(A).

<sup>9</sup> *Id.*

<sup>10</sup> A.R.S. §13-502(A).

## **2. The Present – Competency Evaluations (Rule 11s)**

### **WHAT Qualifies Someone As Incompetent?**

**Arizona Dusky Language:** *“as a result of a mental illness, defect or disability a defendant is unable to understand the nature and object of the proceedings or to assist in the defendant’s defense. . . . In the case of a person under the age of eighteen years of age when the issue of competency is raised, incompetent to stand trial also means a person who does not have sufficient present ability to consult with the person’s lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person.”*

Arizona does not “articulate” the meaning of “unable to understand the . . . proceedings . . . or to assist in . . . (their) defense”. A defendant is not competent if s/he has a mental illness, defect or disability (not cultural issues), that prevents the defendant from having:

- capacity to understand the nature & object of the proceedings against him/her AND/OR
- the ability to consult with counsel and assist in his/her defense

### **Minimal standards include;**

- 1) Understanding the nature of charge(s) and appreciate their seriousness.
- 2) Understand defenses available.
- 3) Understand consequences and differences between a guilty and not guilty plea.
- 4) Aware of legal rights.
- 5) Aware of possible outcomes and consequences.

### **Ability to Assist Counsel includes;**

- 1) Ability to recall and relate facts regarding his/her actions.
- 2) Ability to assist in identifying and locating witnesses.
- 3) Ability to maintain consistent defenses.
- 4) Ability to listen to testimony and inform counsel of misstatements.
- 5) Ability to make decisions among alternatives.
- 6) Capacity to testify.
- 7) The extent to which s/he is apt to deteriorate under stress of the trial/hearing.
- 8) Whether any aural hallucinations would interfere with ability to attend to testimony.
- 9) Ability to convey correct information to attorney.

### **Defendant can be competent despite:**

- 1) Failing to make wise choices (e.g. rejecting a favorable plea agreement).
- 2) Making choices that objectively do not serve his/her best interests.
- 3) Failure or inability to master technical legal knowledge – they only need to have an understanding of the factual basis of proceedings.
- 4) Suffering from hallucinations, organic brain syndrome, mental retardation, amnesia, or delusions; so long as the condition does not significantly interfere with ability to focus and understand proceedings and assist counsel. A.R.S. §13-4501(2)

### **WHAT are the Conclusions of the Evaluation?**

- The defendant is competent
- The defendant is incompetent, but is restorable
- The defendant is incompetent, and not restorable

### **3. The Future – Evaluating Risk**

Pre-sentencing, the judge or probation might request an evaluation for future risk of physical or sexual violence. In addition to the clinical interview, there are specific tools that help the evaluator in making this determination.

#### **Elements that increase risk for future physical violence include:**

- History of violence
- Young age at first violent incident
- Relationship instability
- Employment problems
- Substance abuse
- Major mental illness
- Personality disorders
- Psychopathy
- Early maladjustment
- Prior supervision failure
- Lack of insight
- Impulsivity
- Unresponsive to treatment
- Lack of personal support
- Failed remediation
- Stress

#### **Elements that increase risk for future sexual violence include:**

- Sexual deviancy
- Childhood sexual abuse
- Psychopathy
- Major mental illness
- Substance abuse
- Suicidal / homicidal ideation
- Lack of stable / continuous relationships
- Unstable employment history
- Violent (non-sexual) history
- Other offenses (non-violent).
- Past supervision failures
- “High density” sex offenses
- Multiple forms of sex offenses
- Physical harm to the victims
- Use of weapons or threats in sex offenses
- Escalation in sex crimes
- Extreme minimizing/denial of sex offenses
- Attitudes that support pedophilia
- Lack of realistic plans for the future
- Negative attitude towards intervention

## **Appendix E: Psychology Tests for Different Legal Questions**

### **Tools for Determining Competency**

- Mini-Mental Status Exam-2
- MacArthur Competence Assessment Tool (MacCAT-CA)
- Evaluation of Competency to Stand Trial – Revised (ECST-R)
- Georgia Court Competency Test-Mississippi State Hospital Version (GCCT-MSH)
- Interdisciplinary Fitness Interview (IFI)
- Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)
- Juvenile Adjudicative Competence Interview (JACI)

### **Tools for Assessing Malingering**

#### **1) Incidence Rates of Malingering in Criminal Cases**

- In over 1000 criminal cases 19% were feigning cognitive impairment. Mittenberg, et. al<sup>11</sup>
- 54% of cognitively incompetent criminal cases were determined to be probable or definite cognitive malingering (Ardolt, et.al., 2007, using the Slick criteria)<sup>12</sup>

#### **2) Is it feigning of psychosis or cognitive deficits?**

#### **3) Testing for Psychotic Malingering**

- Miller Forensic Assessment of Symptoms Test (M-FAST)
- Evaluation of Competency to Stand Trial – Revised (ECST-R)
- Structured Interview of Reported Symptoms - 2 (SIRS-2)
- Structured Inventory of Malingered Symptomatology (SIMS)
- Malingering Probability Scale (MPS)
- Millon Clinical Multiaxial Inventory (MCMI-3)
- Minnesota Multiphasic Personality Inventory – 2 (MMPI-2)
- Victoria Symptom Validity Test (VSVT)

#### **4) Testing for Cognitive Malingering**

- Advanced Clinical Solutions
- Inventory of Legal Knowledge
- Test of Memory Malingering (TOMM, for claimed cognitive deficits)
- Validity Indicator Profile (VIP, for claimed cognitive deficits)
- Word Memory Test (WMT)

### **Tools for Neurological Screening**

#### **1) Keep in mind that neurological deficits can be comorbid with:**

- Schizophrenia
- Severe alcohol abuse
- Poly-substance abuse (particularly crystal meth and marijuana).
- Head trauma

#### **2) Assessing Intelligence**

- Kaufman Brief Intelligence Test, Second Edition (KBIT-2)
- Reynolds Intellectual Assessment Scales (RIAS)
- Shipley-2
- Stanford–Binet Intelligence Scales
- Wechsler Abbreviated Scales of Intelligence – II (WASI-II)
- Wechsler Adult Intelligence Scale – IV (WAIS-IV)
- Wide Range Intelligence Test (WRIT)

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<sup>11</sup> Mittenburg, W., Patton, C., Canyock, E. M., & Condit, D. C. (2002). Base rates of malingering and symptom exaggeration. *Journal of Clinical and Experimental Neuropsychology*, 24, 1094-1102.

<sup>12</sup> Ardolf, Barry, Robert Denny, Christi Houston (Nov. 1, 2007) “Base rates of negative response bias and malingered neurocognitive dysfunction among clinical defendants referred for neurological evaluation”, *The Clinical Neurologist*, 21:6, 899-916.

### **3) Assessing Memory Impairment and Neurological Damage**

- Wechsler Memory Scales – IV (WMS-IV)
- Halstead-Reitan Neuropsychological Battery
- Luria-Nebraska Neuropsychological Battery (LNNB)
- Meyers Neuropsychological System
- Quick Neurological Screening Test, 3rd Edition (QNST-3)
- Behavior Rating Inventory of Executive Function–Adult Version (BRIEF-A)
- Advanced Clinical Solutions

### **4) Daily Living Skills**

- Adaptive Behavior Assessment System, 2nd Ed. (ABAS-II)
- Advanced Clinical Solutions
- Assessment of Living Skills and Resources (ALSAR-R2)
- Behavior Rating Inventory of Executive Function–Adult Version (BRIEF-A)
- Vineland Adaptive Behavior Scales, Second Edition (Vineland-II)

### **5) Assessing for ADD and ADHD**

- Conners' Continuous Performance Test II (CPT II)
- Integrated Visual & Auditory Continuous Performance Test – Advanced Ed. (IVA-AE)
- Test of Variables of Attention – version 8 (T.O.V.A.)

### **6) Assessing for Autism**

- Advanced Clinical Solutions
- Autism Spectrum Quotient (AQ)
- Vineland Adaptive Behavior Scales, Second Edition (Vineland-II)

#### ***"What Tests Are Acceptable for Use in Forensic Evaluations? A Survey of Experts"***

Stephen Lally. Professional Psychology: Research & Practice, October, 2003, vol. 34, #5, pages 491-498.

A survey of diplomates in forensic psychology regarding both the frequency with which they use and their opinions about the acceptability of a variety of psychological tests in 6 areas of forensic practice. The 6 areas were mental state at time of the offense, risk for violence, risk for sexual violence, competency to stand trial, competency to waive Miranda rights, and malingering.

For competency to stand trial, at least half of the respondents rated the following tests as acceptable: MacArthur Competence Assessment Tool–Criminal Adjudication (MacCAT-CA), Competency to Stand Trial Assessment Instrument, WAIS–III, Competency Screening Test, Interdisciplinary Fitness Interview—Revised, Georgia Court Competency Test, MMPI-2, PAI, Stanford–Binet–Revised, Halstead–Reitan, and Luria - Nebraska. Of these tests, only the MacCAT-CA and the WAIS–III were recommended by the majority. The diplomates were divided between acceptable and no opinion about the acceptability of using the WASI, Georgia Court Competency Test–Mississippi Hospital, and Competency Assessment for Standing Trial for Defendants With Mental Retardation for a competency to stand trial evaluation. The MCMI–III, which the majority of respondents were divided between acceptable and unacceptable, was categorized as equivocal–unacceptable. At least half viewed as unacceptable the MCMI–II, Rorschach, 16PF, projective drawings, sentence completion, and TAT. At least half of the respondents also had no opinion about the use of the Computer Assisted Determination of Competency to Proceed and KBIT.

In regard to the forensic assessment of malingering, the majority of the respondents rated as acceptable the Structured Interview of Reported Symptoms (SIRS), Test of Memory Malingering, Validity Indicator Profile, Rey Fifteen Item Visual Memory Test, MMPI-2, PAI, WAIS-III, and Halstead-Reitan. The SIRS and the MMPI-2 were recommended by the majority. The psychologists were divided between acceptable and unacceptable about using either version of the MCMI (II or III). They were also divided, although between acceptable and no opinion, for the WASI, KBIT, Luria-Nebraska, and Stanford-Binet-Revised. The diplomates viewed as unacceptable for evaluating malingering the Rorschach, 16PF, projective drawings, sentence completion, and TAT. The majority gave no opinion on the acceptability of the Malingering Probability Scale, M-Test, Victoria Symptom Validity Test, and Portland Digit Recognition Test."

## **Appendix F: Description of Forensic Tests**

An important and respected resource for reviews of psychological testing is the Mental Measurements Yearbook by the Buros Institute ([www.unl.edu/buros/bimm/html/index00.html](http://www.unl.edu/buros/bimm/html/index00.html)). At the homepage click on the left side of the screen where there is a yellow box for “*Test Reviews Online.*” It costs \$15 per test review. The report will provide you a succinct description of the test, strengths and weaknesses.

### **Adaptive Behavior Assessment System, 2nd Ed. (ABAS-II, @ [parinc.com](http://parinc.com))**

Useful for diagnosing and classifying disabilities and disorders, for identifying an individual's strengths and limitations, and for documenting and monitoring performance over time, the ABAS-II provides a comprehensive norm-referenced assessment of adaptive skills in individuals ages birth-89 years. It assesses individuals who may be experiencing difficulties with the daily adaptive skills necessary for functioning effectively in their environments. The measure provides for the assessment of an individual by multiple respondents (i.e., parents, teachers, family members, the individual), evaluates function across multiple environments, and contributes to a complete assessment of the daily functional skills of an individual.

### **Advanced Clinical Solutions (at [pearsonassessments.com](http://pearsonassessments.com))**

ACS for WAIS-IV and WMS-IV is designed to enhance the clinical utility and expand the construct coverage of these respected tests. This new tool provides a common and related sample linking WAIS-IV, WSM-IV, executive function, social cognition, and daily living. Neuropsychologists and general clinicians can use ACS with special populations in a variety of settings, including:

- In forensic settings to measure pre-morbid IQ and effort
- With individuals who have traumatic brain injury to assess executive function and social perception

### **Assessment of Living Skills and Resources (ALSAR-R2)**

**A free resource at [http://sydney.edu.au/health\\_sciences/ageing\\_work\\_health/docs/Clemson\\_ALSAR.pdf](http://sydney.edu.au/health_sciences/ageing_work_health/docs/Clemson_ALSAR.pdf)**

The Assessment of Living Skills and Resources, ALSAR, is an instrument developed to help health professionals assess instrumental activities of daily living. It focuses on accomplishment of tasks rather than potential capabilities. It is completed as an interview and supplemented with observation of skills whenever possible.

### **Autism Spectrum Quotient (AQ)**

**A free resource at <http://www.wired.com/wired/archive/9.12/aqtest.html>**

A questionnaire published in 2001 by Simon Baron-Cohen and his colleagues at the Autism Research Centre in Cambridge, UK. Consisting of fifty questions, it aims to investigate whether adults of average intelligence have symptoms of autism or one of the other autism spectrum conditions. More recently, versions of the AQ for children and adolescents- have also been published. The test was popularized by Wired Magazine in December 2001 when published alongside their article, "The Geek Syndrome". It is commonly used for self-diagnosis of Asperger syndrome and high-functioning autism, although it is not intended to be a diagnostic test.

### **Behavior Rating Inventory of Executive Function–Adult Version (BRIEF-A, at [parinc.com](http://parinc.com))**

The BRIEF-A is a standardized measure that captures views of an adult's executive functions or self-regulation in his or her everyday environment. Two formats are used—a self-report and an informant report. The Self-Report Form is designed to be completed by adults 18-90 years of age, including adults with a wide variety of developmental, systemic, neurological, and psychiatric disorders such as attention disorders, learning disabilities, autism spectrum disorders, traumatic brain injury, multiple sclerosis, depression, mild cognitive impairment, dementias, and schizophrenia. The Informant Report Form is administered to an adult informant who is familiar with the rated individual's everyday functioning. It can be used alone when the rated individual is unable to complete the Self-Report Form or has limited awareness of his or her own difficulties, or with the Self-Report Form to gain multiple perspectives on the individual's functioning. When administered in conjunction with the Self-Report Form, the BRIEF-A Informant Report Form provides a more clinically comprehensive picture of the individual being rated.

### **Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR at [idspublishing.com](http://idspublishing.com))**

*The Basics:* The CAST-MR was designed specifically to test the competency of individuals already diagnosed as mentally retarded to assist in their legal defense. The CAST-MR consists of 50 questions in three sections. The first section contains 25 written multiple choice questions that test defendants' understanding of basic legal terms. The second section contains 15 written multiple choice questions designed to test defendants' ability to assist in their own defense. Both the first and second sections require roughly a 4th grade reading level. The last section consists of 10 open ended questions regarding the defendant's specific case asked orally by the examiner. The test manual provides the test administrator with scoring guidelines for each question asked (0, 1/2 point, or 1 point). Typically, the test takes between 30-45 minutes to administer.



*Strengths and Weaknesses:* While there is limited peer reviewed research on the CAST-MR, the research that does exist suggests that it has high validity. In addition, because the test is specifically designed for those who have already been diagnosed as mentally retarded, the test is able to provide an analysis into the minds of defendants that most other tests are not designed to reach.

*Critical Issues:* While the CAST-MR is designed to test a population that has already been diagnosed as mentally retarded, it still requires a 4th grade reading level which could present a problem if the defendant taking it falls below that level.

*Sample Questions:* What does a judge do? (a) defends you, (b) decides on the case, or (c) works for your attorney. What if the police ask you to sign something and you don't understand. What should you do? (a) refuse to talk to them, (b) sign it anyway, or (c) ask to see your lawyer. (text from wordpress.com)

### **Competency Screening Test (CST)**

*The Basics:* The CST is a 22 question written exam that is designed to screen out those defendants who are clearly competent to stand trial. The 22 questions ask the defendant to complete various sentences with scores for each answer ranging from 0-2. Defendants who score below a 20 are supposed to be given a comprehensive evaluation in order to determine the extent of the competency issues present.

*Strengths and Weaknesses:* While the CST has some problems with "false positives" (labeling defendants incompetent who are actually competent), the rate for "false negatives" (labeling an incompetent defendant as a competent one) is relatively low.

*Critical Issues:* Be aware that the CST's false positive rates leave room to discredit a diagnosis of incompetent as an error in the test. It's also important to remember that the CST doesn't provide descriptions of the examinee's performance. The test only provides a score which is supposed to indicate if a follow up test is needed.

*Sample Questions:* When I go to court my lawyer will \_\_\_\_\_. If the jury finds me guilty, I \_\_\_\_\_. (text from wordpress.com).

### **Competency Assessment Instrument (CAI)**

*The Basics:* The CAI's primary goal is to provide a comprehensive evaluation of competency to stand trial. The CAI is a semi-structured oral interview designed to test 13 different legal skills such as "quality of relating to attorney" and "understanding of court procedure." The test typically takes between 30-45 minutes. Although the CAI manual does not provide formal scoring criteria, it does provides a suggested 1-5 scoring scale (1=total incapacity, 5=no incapacity) as well as sample questions.

*Strengths and Weaknesses:* In light of the fact that the CAI provides no formal scoring procedure, using the CAI scales to reach formal conclusions isn't really a possibility.

*Critical Issues:* Because the CAI doesn't have a formal scoring procedure, it's not technically a formal psychological assessment. However, the CAI can be used to alert attorneys to potential competency issues in their cases.

*Sample Questions:* Do you have confidence in your lawyer? What do you think would happen if you spoke out or moved around in the court room without permission? Suppose a witness against you lied in the court room, what would you do? (text from wordpress.com)

### **Computer-Assisted Determination of Competency Procedure (CADCOMP)**

*The Basics:* The CADCOMP is designed to collect data from a defendant and organize it into a computer generated written report that may help an examiner narrow her focus her clinical interview. The actual test is a computer assisted self-reporting questionnaire consisting of 272 questions (mostly yes/no, true/false, multiple choice) designed to investigate a defendants social history, legal knowledge, and psychological background.

*Strengths and Weaknesses:* While the results of the CADCOMP may help paint a clearer overall picture of the defendant's competency, the lengthy administration time and the need for a follow up interview can make the test time rather extensive.

*Critical Issues:* The CADCOMP presumes a relatively high reading ability. It also requires a defendant to have a basic ability to follow computer commands. This could present serious issues for under-educated defendants, or even defendants who simply lack basic computer knowledge. Also, because the CADCOMP is self-administered, if an examiner relies too heavily on the information provided by the defendant, it is entirely possible they can miss another mental defect the defendant did not mention. (text from wordpress.com)

### **Conners' Continuous Performance Test II (CPT II) Version 5 (at [pearsonassessments.com](http://pearsonassessments.com))**

Restandardized and updated, still contains the unique Conners' paradigm, which is widely used in the assessment of individuals suspected of having "attention" problems. Respondents must press the space bar or click the mouse when any letter except the target letter appears.

### **Evaluation of Competency to Stand Trial – Revised (ECST-R at [parinc.com](http://parinc.com))**

The ECST-R is an objective measure of competency. It includes systematic screenings for feigned incompetency--psychotic and nonpsychotic domains) with two detection strategies (i.e., atypical presentation and symptom severity) to screen for feigned incompetency. The ECST-R is appropriate for use with individuals ages 18 years and older who are involved in adult proceedings. It was also validated on defendants with a range of cognitive abilities. Most defendants with functional intelligence in the borderline and upper level of mild mental retardation (i.e., IQs = 60-69) can be tested with the ECST-R.

Dr. Marvin Acklin comments; "*The ECST-R, developed by Richard Rogers and his colleagues, is a hybrid interview organized into separate semistructured and unstructured components, designed for use 'as a validated psychological measure for competency to stand trial and closely related psycholegal constructs' (Rogers, Tillbrook, & Sewell, 2004). The measure is designed for individuals 18 years of age or older, for individuals with IQs greater than 60, with English-speaking populations. The measure provides a number of scales derived from the Dusky standard: ability to consult with counsel, factual understanding of court proceedings, rational understanding of courtroom proceedings, and reflecting Rogers's ongoing interest, atypical presentation, which assesses response style and potential attempts to feign incompetence. Here too the psychometric properties of the measure are quite strong and the manual details the research foundations of the measure.*"

Marvin W. Acklin, Ph.D. (December 13, 2010. [www.hawaiiforensicpsychology.com](http://www.hawaiiforensicpsychology.com))

### **Georgia Court Competency Test-Mississippi State Hospital Version (GCCT-MSH at [apa.org](http://apa.org))**

*The Basics:* The GCCT-MSH was originally designed to screen out defendants who are clearly competent from those who may need further evaluation. The GCCT-MSH consists of 21 questions and takes about 10-15 minutes. The first 7 questions ask a defendant to visually identify the location of certain actors in the court room. These questions are followed by questions about the functions of actors in the court room, what the defendant's charges are, and the consequences the defendant is facing.

*Strengths and Weaknesses:* The GCCT-MSH is a very easy to administer and is one of the only tests that asks defendants to visually identify items. However, around a third of these questions deal with relatively superficial issues ("who sits where") and may not actually demonstrate concrete understanding of the legal process.

*Critical Issues:* Because the test allows defendants to answer questions through visual identification, this test may be better for clients with limited education or poor verbal skills. However, the GCCT does not address a client's ability to consult or assist his attorney, an important part of competency.

*Sample Questions:* If the jury finds you guilty, what might they do? What are you charged with? (text from [wordpress.com](http://wordpress.com))

### **Halstead-Reitan Neuropsychological Battery (at [parinc.com](http://parinc.com))**

This consists of a combination of neuropsychological tests used to assessment the possible physical aspects and localization of neurological damage. The Battery includes: Trails A and B (which see how quickly a patient can connect a sequence of numbers (trail A) or numbers and letters (trail B). Controlled Oral Word Association Test (COWAT, or Verbal Fluency) - a measure of a person's ability to make verbal associations to specified letters. Halstead Category Test (including seven subtests which form three factors: a Counting factor (subtests I and II), a Spatial Positional Reasoning factor (subtests III, IV, and VII), and a Proportional Reasoning factor (subtests V, VI, and VII).) Tactual Performance Test, Rhythm Test, Speech Sounds Perception Test and Finger Oscillation Test.

### **Integrated Visual & Auditory Continuous Performance Test – Advanced Ed. (IVA-AE at [braintrain.com](http://braintrain.com))**

The IVA-AE (Advanced Edition) is a combined visual and auditory continuous performance test of attention and response control. It is unique in that it is the only CPT designed specifically to help clinicians identify and measure attention problems in the adult population. The IVA-AE is normed for ages 18 – 50 (N=236, divided by gender). It can be used either alone or in conjunction with the IVA+Plus. The task is quite challenging – visual and auditory numbers from 2 to 8 are presented at one-second intervals; the task is to click when you see a 3 or hear a 5. Different numbers are presented simultaneously visually and aurally. For example, an auditory 3 may be presented at the same time as a visual 6. Thus, the subject is challenged to keep the rule in mind and maintain his or her attention to the task of making constant quick "go" or "no go" decisions. The verbal stimuli are spoken by a variety of different voices, and the numbers are displayed using a variety of different fonts. The clinician can opt to use the short version (10 minutes) or the extended version (20 minutes) of the test.

### **Interdisciplinary Fitness Interview (IFI, at wiley.com)**

*The Basics:* The IFI is a 45 minute semi structured interview designed to be administered jointly by a mental health professional and an attorney in order to provide a general overall rating of “fit” or “unfit.” The IFI examines different areas of legal functioning and the presence of psychological defects including hallucinations, amnesia, and mental retardation. A defendant’s responses are scored from 0-2, 0 suggesting no incapacity and 2 suggesting severe incapacity.

*Strengths and Weaknesses:* The IFI is one of the few tests that directly incorporates an attorney into the exam. This allows attorneys to collect data from the defendant on factors directly relevant to her case. However, there has been little empirical research done on the IFI. However, the few studies that do exist suggest it is a highly reliable test.

*Critical Issues:* Because the IFI lacks significant research supporting the IFI’s validity, the results might be easier to challenge. (text from wordpress.com)

### **Inventory of Legal Knowledge (at parinc.com)**

The ILK is designed to assist the forensic examiner in assessing response styles of defendants undergoing evaluations of adjudicative competence. The ILK is *not* a test of adjudicative competence. It is solely a measure of response style; more specifically, it is a measure of a defendant's approach to inquiries about his or her legal knowledge. Written in simple language, the ILK contains 61 true-or-false items about the legal process. Orally administered by an examiner in about 15 minutes (making the instrument suitable for illiterate defendants), the ILK can be used anywhere—including jails and other secure facilities—and scored quickly.

To detect feigned deficits in legal knowledge, the ILK utilizes two strategies. The first identifies defendants as feigning based on scores that are significantly lower than scores expected by chance. The second identifies defendants as feigning based on scores that are significantly lower than those attained by relevant normative groups. The ILK's detection strategies are to be utilized sequentially. That is, the examiner first determines whether the examinee's score on the ILK is significantly below chance. If it is, then the second strategy need not be utilized because a significantly below chance score results in an essentially unequivocal interpretation. If, however, the examinee's ILK score is not significantly below chance, then the examiner compares the obtained score to scores that have been derived from relevant comparison groups.

### **Juvenile Adjudicative Competence Interview (JACI) (at prepress.com)**

This is included in Thomas Grisso’s book; *Evaluating Juveniles’ Adjudicative Competence*. This is the first comprehensive guide offering clinicians the special concepts, procedures, and methods necessary to perform juvenile evaluations using a developmental perspective. The book's approach to evaluating youths' competence to stand trial is consistent with nearly a decade of research by the John D. and Catherine T. MacArthur Research Network on Adolescent Development and Juvenile Justice.

Written in 17 brief units, this guide for forensic clinicians begins with essential concepts that provide a sound legal and developmental psychological foundation for these evaluations. The guide then proceeds to describe in detail special considerations for designing the evaluation, collecting data in ways that are sensitive to deficits in youths’ abilities due to clinical disorders and potential developmental immaturity, and interpreting the results to address the special challenges associated with identifying juveniles’ capacities and deficits as trial defendants. The guide’s Appendices and CD-ROM (included with the book) provide a number of original forms and checklists for use in this evaluation process, including a structured interview - the Juvenile Adjudicative Competence Interview (JACI) - that assists clinicians in obtaining essential data related to youths’ strengths and deficits with legal and developmental relevance for their competence to stand trial.

### **Kaufman Brief Intelligence Test, Second Edition (KBIT-2, atwpspublish.com)**

The Second Edition is administered in 20 minutes. It assesses both verbal and nonverbal intelligence in people from 4 through 90 years of age. The KBIT-2 is composed of two separate scales. The Verbal Scale contains two kinds of items--Verbal Knowledge and Riddles--both of which assess crystallized ability (knowledge of words and their meanings). Items cover both receptive and expressive vocabulary, and they do not require reading or spelling.

### **Luria-Nebraska Neuropsychological Battery (LNNB, (atwpspublish.com)**

Provides a comprehensive yet flexible measure of neuropsychological functioning for 15 years and up. This widely used battery includes standardized administration and scoring to produce a comprehensive measure of neuropsychological functioning. The LNNB is used to diagnose cognitive deficits, including lateralization and localization of focal brain impairments. It also detects very specific problems, as well as mild impairment that might otherwise go unnoticed. Designed for individuals ages 15 and older and can be administered in 1.5 to 2.5 hours. Depending on the patient's condition, it can be given in a single session or in a series of brief sessions.

### **MacArthur Competence Assessment Tool (MacCAT-CA at [prpress.com](http://prpress.com))**

*The Basics:* The MacCat-CA was designed specifically to test a defendant's psychological abilities relevant to competence to proceed. The test is a broader inquiry into competency issues including insight into rational thinking, understanding and recognition of relevant information. The test consists of 22 questions and takes about 30 minutes to complete. The first 16 questions are based on a defendant's understanding of a short story of two men who get into a fight. The last 6 questions are specifically geared to test a defendant's understanding of his own circumstances.

*Strengths and Weaknesses:* Unlike other competency tests, the MacCAT-CA includes a distinction between the defendant's current legal knowledge and his capacity to obtain such knowledge.

*Critical Issues:* Because the reasoning scale is based on a hypothetical story, the defendant may be more or less reasonable when the outcome affects him directly. It's important to determine whether or not a defendant's competency extends to hypothetical situations, as well as his own. (text from [wordpress.com](http://wordpress.com))

Dr. Marvin Acklin comments; "*The MacCAT-CA, developed by the MacArthur Foundation Research Network on Mental Health and the Law, is the queen of CST instruments. The 22-item measure assesses three Dusky-derived competence-related abilities: understanding, reasoning, and appreciation. The instrument was normed on adult defendants. Defendant's capacities are assessed through responses to a series of vignettes. Scores for each vignette are summed and compared to three groups of defendants (N = 729), including unscreened jail inmates, jail inmates receiving mental health services, and hospitalized incompetent defendants. Normative interpretation of MacCAT-CA scores include minimal/none, mild, and clinically significant impairment. The psychometrics of the measure is well detailed in the manual. Although the vignette methodology has received some criticism, in this reviewer's opinion, the primary strength of the measure is the opportunity to evaluate the quality of the defendant's reasoning: the basis for decisional competency. The open response format seems particularly sensitive to the infiltration of impaired reasoning. The professional manual provides a conceptual background for the instrument and detailed exposition of norms, reliability, and validity information. The administration time typically requires 25-45 minutes.*"

Marvin W. Acklin, Ph.D. (December 13, 2010. [www.hawaiiiforensicpsychology.com](http://www.hawaiiiforensicpsychology.com))

### **Malingering Probability Scale (MPS, at [wpspublish.com](http://wpspublish.com))**

A brief self-report inventory to determine the likelihood that an individual is exaggerating claims of mental illness.

### **Meyers Neuropsychological System (at [meyersneuropsychological.com](http://meyersneuropsychological.com))**

The Meyers Neuropsychological System is not dependent upon any specific neuropsychological battery of tests, but does have an extensive database used for comparing your patient's data with various patient groups. The current database is 8000 subjects with 70+ comparison groups identified.

### **Miller Forensic Assessment of Symptoms Test (M-FAST 2 [parinc.com](http://parinc.com))**

The M-FAST is a brief 25-item screening interview for individuals ages 18 years and older that provides preliminary information regarding the probability that an individual is feigning psychiatric illness. The M-FAST focuses exclusively on malingered psychiatric illness.

### **Million Clinical Multiaxial Inventory (MCMI-3 at [pearsonassessment.com](http://pearsonassessment.com))**

*The Basics:* The MCMI-3 is a test designed to help detect personality disorders that correlate to the information found in the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> edition). The test contains 175 true/false questions that are normally presented in writing, but in some cases may be presented by a computer. The questions are designed to test for personality disorders as well as underlying clinical issues like drug and alcohol dependence.

*Strengths and Weaknesses:* The MCMI-3 was standardized with a group of 600 clinical patients and 8.5% came from inmate populations. This helps provide support for the usage of the MCMI-3 in court. However, the MCMI-3 doesn't give data on the standard error rate of the exam, meaning there is little data to gauge the potential error rate of the exam.

*Critical Issues:* The test requires an 8th grade reading level. If the exam is given to someone who falls below that level, the results of the exam become easier to challenge. (text from [wordpress.com](http://wordpress.com))

### **Minnesota Multiphasic Personality Inventory - 2 (MMPI-2 at [pearsonassessments.com](http://pearsonassessments.com))**

*The Basics:* The MMPI-2 is designed to evaluate thoughts, emotions and behavioral traits. Ultimately, the results of the test are supposed to reflect the strengths and weaknesses of an individual's personality and in the process, help identify various mental disorders and defects. The MMPI-2 is a written test containing 567 true/false statements. The test is typically administered in writing and takes between 60-90 minutes to complete. However, the test may also be given by a computer. The test is given to adults 18 years or older, though a version of the MMPI-2, the MMPI-A has been designed for adolescents age 14-18.

*Strengths and Weaknesses* The MMPI-2 continues to be one of the most commonly used tests by psychologists and other mental health providers. Despite its popularity, the MMPI-2 has not been able to demonstrate consistent patterns that help predict legally relevant issues like recidivism rates and violence.

*Critical Issues:* Because of the tests length and breadth (567 questions!), it requires anywhere between a 5th grade to an 8th grade reading level to complete. This could present serious problems when dealing with poorly educated test takers, test takers who are suffering from a neurological injury, test takers who are under the influence of drugs and alcohol, etc. (text from wordpress.com)

#### **Mini-Mental Status Exam-2 (at parinc.com)**

The original MMSE is one of the most frequently used brief assessments of cognitive impairment. With a new standard version that is equivalent to the original MMSE and new brief and expanded forms, the MMSE-2 retains the original's clinical utility and efficiency while expanding its usefulness in populations with milder forms of cognitive impairment, including subcortical dementia. An even briefer version, the new MMSE-2: Brief Version (MMSE-2:BV), is designed for rapid assessment in a variety of settings. Equivalent, alternate forms (Blue and Red) of each MMSE-2 version have been developed to decrease the possibility of practice effects that can occur over serial examinations.

#### **Psychological Assessment Inventory (PAI at parinc.com)**

*The Basics:* The PAI is a personality test designed to provide information relevant for a clinical diagnosis and to measure both the severity and breadth of any psychological defects discovered. The test is composed of 344 questions whose responses are rated on a 4 point scale ranging from false, not at all true, to very true. The test takes about an hour with someone with a 4th grade reading level or above to complete. The exam is designed to be given in writing with the test taker sitting in a desk or a table by himself.

*Strengths and Weaknesses:* The results of the PAI have been shown as useful in predicting future violence and recidivism rates. However, this test is relatively new and its validity isn't as established as some other personality tests, like the MMPI-2.

*Critical Issues:* The test requires a 4th grade reading level and may not be appropriate for people who fall below that level. In addition, because the PAI is a newer exam, its results are easier to challenge in court. (text from wordpress.com)

#### **Quick Neurological Screening Test, 3rd Edition (QNST-3, at parinc.com)**

An assessment of motor skills, the QNST-3 documents the presence of neurological soft signs (NSSs), which can indicate neural trauma and are often harbingers of learning difficulties in individuals without a history of trauma. Expanded norms now cover not only children but also adults, including the geriatric population. QNST-3 tasks are commonly used in traditional neurologic exams and require no special equipment.

#### **Rey's 15-Item-Visual Memory Test (at apa.org)**

Rey (1964) devised a simple 15-item visual memory test to detect faking or exaggeration of memory complaints.

#### **Reynolds Intellectual Assessment Scales (RIAS at wpspublish.com)**

The RIAS is an individually administered test of intelligence appropriate for ages 3 through 94 years, which includes a co-normed, supplemental measure of memory. The RIAS includes a two-subtest Verbal Intelligence Index (VIX), a two-subtest Nonverbal Intelligence Index (NIX), and a Composite Intelligence Index (CIX). The CIX assesses overall general intelligence, including the ability to reason, solve problems, and learn. The VIX assesses verbal intelligence by measuring verbal problem solving and verbal reasoning where acquired knowledge and skills are important. The NIX assesses nonverbal intelligence by measuring reasoning and spatial ability, using novel situations and stimuli that are predominantly nonverbal. Administration of the four intelligence subtests by a trained, experienced examiner requires approximately 20 to 25 minutes.

#### **Shipley-2 (atwpspublish.com)**

The *Shipley Institute of Living Scale* has been widely used to assess cognitive functioning and impairment. Revised and restandardized, this new version continues to offer a brief yet robust measure of both crystallized and fluid intelligence---now with updated norms, an expanded age range, a nonverbal Block Patterns scale, and unlimited-use computer scoring.

### **Structured Interview of Reported Symptoms – Version 2 (SIRS-2 at parinc.com)**

The *Structured Interview of Reported Symptoms-Version 2* (SIRS-2) is a controlled interview designed to detect malingering and other forms of feigning of psychiatric symptoms. The content covers a wide range of psychopathology, as well as symptoms that are unlikely to be true. The SIRS-2 is designed to detect eight response styles commonly associated with feigning. Each of these response styles are described by one of four classifications: 1) honest, 2) indeterminate, 3) probable feigning, or 4) definite feigning

The SIRS consists of eight primary and five supplementary scales for the assessment of feigning, including a scale to assess defensiveness; the content of each scale varies so that endorsement of items on a particular scale does not reflect any specific mental disorder. It is appropriate for individuals ages 18 – 100 years old. It takes approximately 1 hour to administer.

### **Structured Inventory of Malingered Symptomatology (SIMS at parinc.com)**

The SIMS is a 75-item, true/false screening instrument that assesses for both malingered psychopathology and neuropsychological symptoms. The instrument reduces clinician burden and increases assessment efficiency by serving as a screen for malingering and by reducing hands-on administration time. In addition to serving as a screening measure, the SIMS can be used as part of a battery of tests providing convergent evidence of malingering, rather than relying on a single instrument for diagnosis. The SIMS also is recommended as part of a comprehensive approach to evaluation alternative hypotheses for response patterns are to be considered. The SIMS is written at a 5th-grade reading level and is appropriate for ages 18 years and older.

### **Stanford–Binet Intelligence Scales (at wpspublish.com)**

This test initiated the modern field of intelligence testing and was one of the first examples of an adaptive test. The test originated in France, then was revised in the United States.

### **Test of Memory Malingered (TOMM at parinc.com)**

The TOMM instrument is designed to provide a reliable, economical first step as part of a full psychological battery to help assess whether an individual is falsifying symptoms of memory impairment. It is given to defendants 16 and older. It takes approximately 15 to 25 minutes to administer.

### **Test of Variables of Attention – version 8 (T.O.V.A. at tovatest.com)**

The T.O.V.A. promotes data based clinical decision making with its objective information about attention and impulsivity - information that clinicians do not obtain from behavior ratings and history alone. The T.O.V.A. correctly identifies over 86% of ADHD cases and the “hit” rate improves with the addition of other clinical information.

### **Validity Indicator Profile (VIP at pearsonassessments.com)**

The Validity Indicator Profile (VIP) is a general assessment of response style designed to identify valid and invalid responding. The VIP can be used as a validity indicator for concurrently administered tests. It is given to subjects 18-69 years of age. It takes approximately 1 hour to administer.

### **Victoria Symptom Validity Test (VSVT (at parinc.com)**

Suitable for use in both outpatient and inpatient settings, the VSVT is a computerized test that uses a forced-choice (two-alternative) model to assess possible exaggeration or feigning of cognitive impairments. Test interpretation compares the respondent's performance to what is expected to occur on the basis of chance alone; this binomial-based approach to respondent classification minimizes the risk of false positives.

### **Vineland Adaptive Behavior Scales, Second Edition (Vineland-II at pearsonassessments.com)**

A leading measure of personal and social skills needed for everyday living. It identifies individuals who have Intellectual and Developmental Disabilities, developmental delays, autism spectrum disorders, and other impairments.

### **Wechsler Abbreviated Scales of Intelligence – II (WASI-II at pearsonassessments.com)**

The WASI-II provides a brief, reliable measure of cognitive ability. This revision maintains the format and structure of the WASI while offering new content and improvements to provide greater clinical utility and efficiency. If a full WAIS – IV is administered later – the four scales on the WASI-II can be transferred over, thus reducing the number of scales that have to be administered on a subsequent WAIS-IV.

### **Wechsler Adult Intelligence Scale – IV (WAIS-IV at pearsonassessments.com)**

Designed to measure intelligence in adults and older adolescents. The 4<sup>th</sup> edition was released in 2008 by Pearson.

**Wechsler Memory Scales – IV (WMS-IV at [pearsonassessments.com](http://pearsonassessments.com))**

The **Wechsler Memory Scale (WMS)** is a neuropsychological test designed to measure different memory functions in a person. It can be used with people from age 16 through 90. The current version is the fourth edition (WMS-IV) which was published in 2009 and which was designed to be used with the WAIS-IV. WMS-IV is made up of seven subtests: Spatial Addition, Symbol Span, Design Memory, General Cognitive Screener, Logical Memory, Verbal Paired Associates, and Visual Reproduction. A person's performance is reported as five Index Scores: Auditory Memory, Visual Memory, Visual Working Memory, Immediate Memory, and Delayed Memory.

**Wide Range Intelligence Test (WRIT at [wpspublish.com](http://wpspublish.com))**

Individually administered in just 20 to 30 minutes, this efficient intelligence test yields a Verbal Reasoning IQ, a Visual Reasoning IQ, and a Composite IQ. Appropriate for use with people from 4 to 85 years of age, the WRIT was co-normed with the Wide Range Achievement Test to help psychologists make valid comparisons between intellectual and academic functioning. The WRIT is composed of four subtests, selected for their historically high loadings on Spearman's "g" factor. Two of the subtests assess verbal-crystallized abilities, which are more dependent on acquired knowledge, and two measure nonverbal-fluid abilities, which are environmentally and culturally reduced.

**Word Memory Test (WMT at [wordmemorytest.com](http://wordmemorytest.com))**

The Word Memory Test (WMT) is a computerized instrument with multiple subtests measuring verbal and nonverbal memory. The instrument helps discriminate between genuine memory impairment versus feigned memory impairment. It is able to account for cases of dementia.

### **About Dr. Paul Simpson**

- Since 2003 has provided over 240 one-day trainings in all 50 states for counseling professionals and probation officers on assessing and treating sexual compulsions.
- Has an extensive background in working with victims and perpetrators of sex crimes in outpatient and inpatient settings. This has included individual and family counseling, group counseling, and court-ordered psychosexual evaluations.
- Author of *Second Thoughts*, a book that was instrumental in helping expose the false claims and dangers of ‘recovered memory therapy.’ Throughout the 1990’s Dr. Simpson was a leading national educator on *False Memory Syndrome* and trained thousands of counseling professionals on standards of practice. He also served as an expert consultant to the *Arizona Board of Psychologist Examiners*.
- Dr. Simpson has been a guest on *The Joan Rivers Show*, the *Leeza Gibbons Show*, *Parent Talk Radio*, *Focus on the Family*, *Frontline*, and *Fox News*. He has been a professional consultant to a number of national media, including *20/20*, *60 minutes*, *NBC News*, *Nightline*, *The Oprah Winfrey Show*, the *Chicago Tribune*, *Dateline*, *The Today Show*, *Focus on the Family*, and *Vanity Fair* magazine.

Don’t tell anyone, but all of the above boring stuff is really a clever disguise to hide Dr. Simpson’s true identity – a mandolin-picking, bluegrass jammin’ nutcase. As president of the *Desert Bluegrass Association* ([www.desertbluegrass.org](http://www.desertbluegrass.org)) he wastes all kinds of time and money on a tremendously un-cool obsession – much to the embarrassment of his two children. If you want to embarrass your children as well, come and sit in on a free Bluegrass Workshop he leads every Monday night on the eastside of Tucson.

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