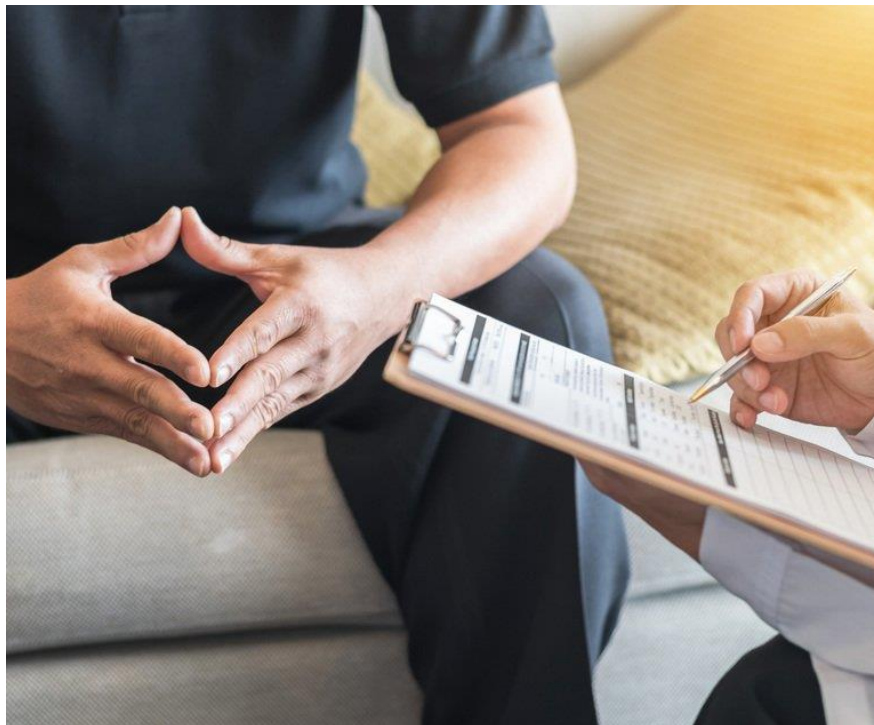


Evaluating the evaluator: Implicit bias in determining parental judgment

Elisa Reiter and Daniel Pollack | May 31, 2023



Forensic psychologists are called upon to make recommendations to courts about the fitness of parents. Their evaluations can take place in the context of adoptions, custody disputes, and cases involving termination of parental rights. The American Psychological Association standards recommend that psychologists who conduct evaluations gather data to give a full picture of parties enmeshed in such court battles. These include:

1. Family of origin history;
2. History of prior mental health issues/mental status;

3. How involved the parent has been in the child's life;
4. How competent the parent is to meet the child's needs;
5. Home life;
6. How the parties and the child(ren) interact;
7. How the children are disciplined;
8. The children's needs;
9. Stressors for the parties and the children;
10. Whether there are allegations of abuse – physical, mental, sexual - and whether those allegations can be substantiated;
11. A written summary for the court.

What may remain unspoken, but a component part of such investigations, is the evaluator's attempts to measure parental judgment. Does the person seeking custody exercise sound judgment, or is that person's judgment somehow impaired? There is no clear measure for evaluating parental judgment, yet evaluators seem to reach conclusions as to whether or not a party exercises sound judgment with frequency – and there lies fodder for cross-examination.

Implicit bias must be considered when evaluating the evaluator. Suppose the evaluator has a case with the following issues:

1. One of the litigants condones co-sleeping with a five-year-old;
2. One of the litigants has a spotty work history;
3. One of the litigants is prone to sexual promiscuity, including days that the party is in possession of the child.

Is the presence of such factors a reflection on parental judgment? There are many ethnic groups who applaud co-sleeping with a child, yet evaluators often frown upon co-sleeping. Can we differentiate good parental judgment versus bad parental judgment without looking at the evaluator's own personal biases and background? Attorneys must consider fundamental attribution error in evaluating evaluators. We tend to judge people who act differently from the way we do more harshly, and give those whose actions are consistent with our own less so. If the evaluator ever engaged in co-sleeping with a child, or has a long history of job-hopping, or has had multiple sexual partners over time, only to judge a litigant harshly for

engaging in such activities, that evaluator has likely committed a fundamental attribution error.

In today's world, with its technological advancements, we have access to many items with which parties can document their allegations. However, emails, texts, pictures, audiotapes and videotapes are all subject to deepfake, defined by the Merriam-Webster dictionary as: "an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said."

Mental health professionals want to accept information from parties and collaterals at face value – what if the "proof" upon which the mental health professional relies upon to determine that an individual is exercising poor judgment -- not in the best interest of the children made the subject of the case – is fake? While attorneys go to great lengths to authenticate records, their credulity forces them to question whether a party may be so desperate to win that the party creates or modifies records. Has the mental health professional questioned all litigants regarding the authenticity and reliability of the records presented in the context of the evaluation? In such cases, we often have a swearing match. What criteria has the mental health professional used to verify allegations?

There is a difference too, between legal judgment and moral judgment. Thomas, Stanford and Sarnecka conducted experiments that formed the basis of an article on moral judgments. They concluded:

We found that when people make a negative moral judgment about a parent who leaves her child alone, their estimate of the danger facing that child is higher than for a situation that objectively poses equal risk to the child, but does not elicit the same moral disapproval. Specifically, participants judged that children whose parents left them alone on purpose were in greater danger than those whose parents left them by accident, despite identical descriptions of the circumstances in which children were alone (i.e., asleep in a car, parked in the cool underground parking garage of a gym, for 15 minutes).

Imagine you have a case where there has been an outcry by a minor child of sexual and physical abuse by a step-sibling that is duly reported to Child Protective Services. An investigative social worker is assigned to the case. The social worker opines, on arriving to interview the child, “Oh look, a swimming pool! I bet you really like that pool. I’d love to be here all the time to swim in that pool. Don’t you?” Has the social worker, from that observation alone, engaged in unconscious bias? Has the worker approached the case as though there is no concern for abuse, or is the worker simply trying to diffuse the situation and gain the child’s trust?

Evaluators have a duty to differentiate litigants, to act as the arm of the court in measuring who will serve the best interests of the children made the subject of custody fights, adoption actions and/or termination actions. Lawyers have the duty to dig deeper, to assure that the information upon which the mental health professional has relied is accurate. In times of crises, has each parent made sound decisions, or have they been overwhelmed? Is it too much for one party to meet the everyday needs of the child? Is there an explanation for a party’s hesitancy or impetuous decision making? Such assessments may include subjective components, separate and apart from facts gleaned from psychological testing results. Is the parent teaching the children to act independently, or is the parent engaging in helicopter parenting? Should different parenting styles matter to the evaluator? Evaluators face tough work, and tougher decisions. Lawyers must interrogate evaluators to assure that evaluators base their report and recommendations on thorough investigations and an assessment of each parent’s strengths and weaknesses. No shortcuts allowed.

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