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CONFIRMED ATTORNEY COACHING PRIOR TO NEUROPSYCHOLOGICAL EVALUATION

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Even though it has been speculated that attorneys might educate or "coach" their clients prior to forensic neuropsychological examinations, there have been no documented instances of this to date. It might be particularly tempting for attorneys to coach their clients on symptom validity scales. A case in which it was strongly suspected that attorney coaching had occurred is presented. The attorney representing the patient actually admitted to an administrative law judge that he had educated his client prior to examination. Strategies for reducing the effectiveness of attorney coaching, thereby increasing the validity of neuropsychological test results, are suggested.

The effectiveness of psychological validity scales and neuropsychological tests designed to measure cooperation and motivation during evaluation is dependent upon the examinee being naive to the nature and purpose of these instruments. However, because the outcome of forensic psychological and neuropsychological assessment can influence the distribution of considerable amounts of money, professionals involved in the adversarial judicial process, including attorneys and psychologists, might be tempted to "educate" examinees regarding these tests before they are administered. This behavior would clearly be unethical for psychologists, but the ethical restrictions are less clear for attorneys. Indeed, it is felt by some attorneys that a failure to coach clients on symptom validity techniques prior to psychological assessment constitutes legal malpractice (J. Stevenson, personal communication, October 15, 1993).

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Even so, the Arizona Supreme Court Rules of professional conduct for attorneys clearly state that a lawyer shall not falsify evidence or assist a witness to testify falsely and shall not counsel clients to engage in conduct that the lawyer knows is fraudulent (Arizona St S CT Rule 42 RPC ER 1.2 & 3.4, 1994). Even though educating clients regarding psychometric tests has not been specifically addressed, case law also suggests that coaching patients is improper. In *Slottow v. American Casualty Company*, 1 F.3d 912 (9th Cir. 1993), the court discussed the coaching problem. It cited *Betts v. Allstate Insurance Company*, 154 Ca. App. 3d 688, 201 Cal. Rptr. 528 (1984) in which the California state court imposed punitive damages upon Allstate because it had "willfully manipulated its own client through...coaching." Finally, in *State ex rel. Collins v. Superior Court of Arizona*, 132 Arizona 180, 644 P.2d 1266 (1982), the Arizona Supreme Court stated, "Coaching a witness...may run afoul of tenets of ethics this court has promulgated."

In spite of these apparent prohibitions, some authors have speculated that attorney coaching prior to forensic psychological assessment might occur and thereby invalidate the results of these types of evaluations (Ziskin & Faust, 1988). Other

authors have speculated that attorneys might coach clients regarding specific instruments, such as the Minnesota Multiphasic Personality Inventory-2 (MMPI-2; Butcher, Dahlstrom, Graham, Tellegen, & Kaemmer, 1989) validity scales (Pope, Butcher, & Selen, 1993). Wetter and Corrigan (in press) surveyed 70 practicing attorneys and discovered that four fifths of them believe that they should educate their clients regarding psychological testing prior to forensic evaluations. One half of the practicing attorneys in the survey felt that they should routinely provide specific information regarding symptom validity scales to their clients prior to psychological testing.

It is common practice for some attorneys and psychologists to show their clients lists of symptoms associated with various psychological disturbances, such as Posttraumatic Stress Disorder and/or closed head injury, before or during examination (C. Miller, personal communication, September 20, 1993; Lees-Haley, 1992). Indeed, a "how to" manual on preparing mild head injury plaintiffs has been published in the legal literature (Taylor, Harp, & Elliott, 1992). However, there has yet to be a confirmed report in the literature of explicit attorney coaching before psychological or neuropsychological assessment. This is not surprising, given the rules governing attorney-client and psychologist-patient privilege.

Even though there are no confirmed reports of attorney coaching, a number of investigators have been sufficiently concerned about the possibility of it that they have conducted analog studies to assess the effects of this practice. These have included analog investigations of the effects of coaching on the MMPI-2 (Lamb, Berry, Wetter, & Baer, 1994; Rogers, Bagby, & Chakraborty, 1993) and the effects of coaching on neuropsychological symptom validity tests (Martin, Bolter, Todd, Gouvier, & Niccolls, 1993; Martin, Gouvier, Todd, Bolter, & Niccolls, 1992). All of these studies have shown that coaching has allowed simulated malingerers to successfully modify their response patterns to appear more like patients with actual disorders, as well as to improve their chances of avoiding detection of their simulation efforts.

Until now, the existence of attorney coaching has been merely speculative. This article describes a case in which attorney coaching was thought to have occurred, with the patient's attorney actually admitting to an administrative law judge that he had educated his client.

Case History

Patient 1 was a 27-year-old college-educated, left-handed man who suffered a minor head injury when an aircraft cargo door fell on him. In the emergency room, he reported a 15 to 20 second loss of consciousness, with no retrograde or posttraumatic amnesia. Doctors' notes reveal that there was "no evident trauma to the head or neck" and the neurologic exam was "completely within normal limits." The patient left the emergency room after about an hour. In spite of the relatively trivial nature of this injury, Patient 1 claimed vague symptoms and disabilities that were persisting more than 2 years later.

A neuropsychological examination was requested by Patient 1's workers' compensation carrier. Patient 1's neuropsychological test scores are presented in Table 1. Inspection of Table 1 reveals the presence of several impaired neuropsychological test performances (e.g., Wechsler Adult Intelligence Scale-Revised [WAIS-R; Wechsler, 1981] and Tactual Performance Test [TPT; Reitan & Wolfson, 1985]), relative to the expected performances of a young man with a bachelor's degree. Two cooperation measures were also administered (see Table 2), the Dot Counting Test (Lezak, 1983) and a short form of the Portland Digit Recognition Test (PDRT; Binder, 1990, 1992, 1993a, 1993b; Binder & Willis, 1991). While Patient 1's response latencies on the ungrouped portion of the Dot Counting Test did not fit the expected performance curve (Lezak, 1983; Rogers, Harrell, & Liff, 1993), his PDRT responses were 100% accurate, suggesting that he was cooperative during testing and that his neuropsychological impairments were valid.

Toward the end of the examination, the patient let it slip that prior to the examination he had been provided with an article written by the examiner

Table 1
Neuropsychological Tests Taken by Patient 1

Test	Score
WAIS-R	
Full Scale IQ	97
Verbal IQ	108
Performance IQ	87
Age Corrected Subtest Scaled Scores	
Information	10
Digit Span	13
Vocabulary	11
Arithmetic	13
Similarities	11
Picture Completion	10
Picture Arrangement	10
Block Design	8
Digit Symbol	4
Trail Making Test A^a	34 s, 0 Errors
Trail Making Test B^a	67 s, 0 Errors
Finger Tapping Test^a	
Right hand	46.8
Left hand	43.8
Grip Strength^a	
Right hand	49.5
Left hand	44.5
Sensory Perceptual Examination^a	
Total errors	1
Tactual Performance Test^a	
Right hand	9 min
Left hand	8 min
Both hands	2.7 min
Total time	19.7 min
Memory	7
Location	6
Wechsler Memory Scale^b	
Logical Memory Immediate Raw Score	31
Delayed Raw Score	25

^aReitan and Wolfson (1985). ^bWechsler (1945).

Table 2
Symptom Validity Tests Taken by Patient 1

Test	Score
Dot Counting Test	
Total Errors	0
Ungrouped Out of Sequence Response Latencies	2
Response Latency on Grouped Card Equal or in Excess of Analogous Ungrouped Card	0
Portland Digit Recognition Test	
5 s Delay	9 of 9 Correct
15 s Delay	9 of 9 Correct
30 s Delay	18 of 18 Correct

(Youngjohn, 1991) describing the nature of the PDRT. Upon further questioning, he indicated that he had a life-long interest in neuropsychology and that he had been given the article by a "friend from New York." This statement was felt to have low credibility. Indeed, Patient 1's attorney, who was not from New York, admitted to the administrative law judge presiding over proceedings at the Industrial Commission of Arizona that he had supplied the article to his client. While Patient 1 lost his case, his attorney was not subjected to any rebuke, disciplinary action, or even comment from the judge.

Discussion

The patient described in this report sustained a mild head injury at most by all criteria. The head injury outcome literature (e.g., Dikmen, Machamer, Winn, & Temkin, 1995) suggests that persisting disability more than 2 years later would be highly unusual after an injury of this severity. When patients who have suffered mild head injuries complain of severe, persisting disability, these complaints may frequently be a function of their pursuit of financial compensation, rather than actual neuropsychological deficits (Youngjohn, Burrows, & Erdal, 1995).

Psychologists and neuropsychologists performing forensic examinations typically assume that their patients have not been prepared or "educated" prior to examination. This assumption may not

be accurate in every case. Indeed, Wetter and Corrigan's (in press) survey of practicing attorneys suggests that forensic patients who have not been prepared for the examination by their attorneys before it takes place may be the exception, rather than the norm.

The present case and previous analog studies demonstrate that attorney coaching not only occurs, but that it can help malingerers avoid detection. Consequently, it is recommended that those forensic psychologists and neuropsychologists who want to protect the validity of their data not rely exclusively on one or two measures of cooperation and/or symptom validity scales.

Ideally, a cooperation/validity battery should include multiple instruments that change frequently. Fortunately, this is presently a popular area of test development. Future researchers are encouraged to continue to create new, effective instruments to measure motivation and validity of self-report during examination.

Finally, psychologists who have evidence of attorney coaching are urged to consider filing a complaint with their state bar. Psychologists are ethically obligated to maintain test security. The practice of attorney coaching could potentially undermine the usefulness of psychometric evidence and psychological expert testimony to the courts.

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