

Authority of the Rorschach: Legal Citations During the Past 50 Years

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A computer-based search of Rorschach legal citations between 1945 and 1995 was conducted. The Rorschach test was cited in 247 cases in state, federal, and military courts of appeal, averaging 5 times per year. Twenty-six cases were identified in which the reliability or validity of the Rorschach findings were an issue (10.5%). Despite occasional disparagement by prosecutors, the majority of the courts found the test findings to be both reliable and valid. When Rorschach testimony was limited or excluded, it was usually due to invalid inferences that the expert had made from the test data.

Although the Rorschach remains one of the most widely used methods of psychological assessment in clinical practice (Piotrowski & Keller, 1992), its admissibility in the legal or forensic arena has, until recently, been unknown. Among 7,934 cases in which psychologists presented Rorschach testimony, Weiner, Exner, and Sciarra (1996) found only six incidents (.08%) when the test was seriously challenged, and only one time (.01%) when the testimony was declared inadmissible as evidence. The question of legal weight of the Rorschach, however, remains unanswered. *Weight* is the "influence, effectiveness, or power to influence judgment or conduct" (Black, 1979, p. 1429), and when applied to the Rorschach test, is particularly compelling for two reasons.

First, the U.S. Supreme Court rejected the so-called "Frye test" in 1993, which for years had measured the admissibility of a scientific tool or technique by its general acceptance in the relevant scientific community (*Frye v. United States*, 1923). Instead, the Court found in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 1993) that each judge should determine the admissibility of scientific data based on relevance to the case and scientific validity. Notwithstanding the burden placed on judges without formal training in the scientific method to be the gatekeepers of validity, many states, excepting California and Florida, have adopted the "Daubert" standard.

Second, two of the authors, in their sojourns throughout the United States and many countries abroad, are regularly asked if they ever use the Rorschach in forensic cases. When the timid and searching question is met with an optimistic, "yes, of course," the reaction is typically surprise and some disbelief that they would ever dare do so (presumably on the grounds of wishing to avoid a humiliating and withering cross examination). The authors' and others' experiences suggest that such a torment, however, rarely occurs.

Where the rubber meets the road, or perhaps the ink blends with the paper, is the degree to which the Rorschach carries weight in the courtroom for all psychologists. Experts can be qualified and scientific evidence in the form of psychological tests can be admitted, but the most important question is the degree to which the testimony and scientific method influences the court's decision making, which is what we call "the authority of the Rorschach." We devised a method to answer this question empirically.

METHOD

We selected as our measures the quantity and quality of Rorschach legal citations between 1945 and 1995. Legal citations in our study were all published federal, state, and military case law opinions written by various courts of appeal throughout the United States—ranging from state appellate courts to the United States Supreme Court. We entered the word *Rorschach* into the Lexis computer database at the University of San Diego School of Law and retrieved all cases in which the word was used between 1945 and 1995. We then did a quantitative analysis, reading each one and dividing them into cases in which the Rorschach test was (a) cited and discussed, (b) only cited, and (c) the word did not refer to the test, but had another connotation. We then qualitatively reviewed the cases that cited and discussed the Rorschach test to identify those in which the reliability or validity of the test was an issue.

RESULTS

There were 494 different cases between 1945 and 1995 in which the word *Rorschach* appeared. We were not able to access 37 of these cases, presumably because

they were unpublished (and therefore set no legal precedent), reducing our number to 457. We then reviewed these 457 cases and found 194 judicial opinions in which the Rorschach test was mentioned and discussed, 53 opinions in which the test was only mentioned, and 210 opinions in which the word had a different connotation. Among the cases in which the test was mentioned and discussed ($n = 194$), there were 18 military opinions, 106 state opinions, and 70 federal opinions. There was no U.S. Supreme Court opinion in which the Rorschach test was mentioned.

We then reviewed the cases in which judicial opinion mentioned and discussed the Rorschach test for issues concerning reliability and validity. We found 26 cases. We summarize the case findings in chronological order to lend a historical context to this study.

1945–1954

The first decade of our search produced only one case. In *People v. Jenko* (1952), the Supreme Court of Illinois ruled that Rorschach findings, gathered 20 months before the date of the crime of murder, were properly excluded from trial since all they could identify was a psychopathic personality. This information would be “merely cumulative,” not a defense, and therefore “could have no legitimate bearing on the issues” (p. 785).

1955–1964

The second decade of our search also produced only one case. In *Alexander v. Alexander* (1956), the Fourth Circuit, U.S. Court of Appeals ruled that it was an error for the trial court in a civil mental competency case to reject the Rorschach testimony of a psychologist on referral from a physician. The testimony purported to show that the wife “was not psychotic but that she had some of the qualities of a mildly paranoid person ... likely to make life miserable for those who came in close contact with her” (p. 119).

1965–1974

This decade of our search produced eight cases. In *People v. Pecora* (1969), an Illinois appellate court upheld the refusal of the trial court in a murder case to allow the complete testimony of a psychologist where the defense did not intend to question the doctor on the ultimate issue of insanity. In another Illinois opinion that same year, the Supreme Court in *People v. Noble* (1969) ruled that a clinical psychologist should be permitted “at least some explanation of the purpose of the

tests and their results" (p. 102). In a Florida personal injury case, *Reese v. Naylor* (1969), a state court of appeal ruled that a "clinical psychologist once qualified as an expert witness ... is competent to testify as to his diagnosis of a person's mental condition based on the use of the devices and techniques ordinarily resorted to by such practitioners" (p. 490). And in *People v. Coogler* (1969), the California Supreme Court ruled in a death penalty case that the jury can reject expert opinion—the Minnesota Multiphasic Personality Inventory (MMPI) and Rorschach findings—if the psychologist gave a diagnosis but did not "explain how these defects were related to the defendant's mental processes" (p. 798). The court emphasized that the chief value of an expert's testimony is "the material from which his opinion is fashioned and the reasoning by which he progresses from his material to his conclusion" (p. 797).

In *U.S. v. Brawner* (1972) the prosecutor disparaged the Rorschach at trial, "after all they are just blots of ink" (p. 1004). The Court of Appeals of the District of Columbia wrote, in response,

there was neither testimony adduced on cross-examination, nor testimony of a prosecutor's witness, to support a disparagement of the very concept of projective tests, as based on mere inkblots ... the record context includes clarifying questions by the trial judge that brought out for the jury both the long and widespread use of projective tests and their use as a basis for this expert's conclusions. (p. 1004)

In another lengthy opinion from the same court that year, *U.S. v. Alexander* (1972), Chief Judge Bazelon recounted the questionable validity of psychological tests at the time and criticized the conclusory testimony of experts; but he also criticized the "ridicule" (p. 955) of such tests as the Rorschach on cross-examination, and the defendant's right to examiners who can perform as witnesses.

The California Court of Appeal, in *McLaughlin v. Board of Medical Examiners* (1973), found the Rorschach to be "credible, competent evidence" (p. 1017) in the repeal of a physician's license that involved public engagement in homosexual conduct. And the District of Columbia federal court determined that the Rorschach test is "designed to test personality and not amenability to treatment" for a youth offender (p. 285). In a moment of prescient wisdom, the court also wrote, "these personality tests ... must be validated for that purpose" (*U.S. v. Norcome*, 1974, p. 285).

1975–1984

This decade of our search produced nine cases. In *Williamson v. State of Mississippi* (1976), the defendant appealed in part because the psychologist based his opinion on a Rorschach administered by a "clinical technician." The court found this appeal

to be without merit, and wrote, "It is not necessary that the education of a technician whose duty it is to administer routine tests should reach such a high degree" (p. 276). That same year the Court of Special Appeals of Maryland, in *Noble v. Director, Patuxent Institution* (1976), ruled that raw test data, including the Rorschach protocol, should not be excluded from review consideration "to test opinions expressed by experts" (p. 253) in defective delinquency proceedings. But the Supreme Court of Alaska, in *Alto v. State* (1977), ruled that the Rorschach was a technique, not a test, and "it doesn't carry the kind of statistical reliability and validity that a test does" (footnote 15, p. 500).

In *Neumerski v. Califano* (1981) a federal district court found that "reports of psychologists are relevant medical evidence" (p. 1014) when based on observations and tests, including the Rorschach. In *U.S. v. Ming Sen Shiue* (1981) a prosecutor once again devalued the test: "Rorschach. My pen leaks and I have a Rorschach ink spot on my shirt with a matching t-shirt" (footnote 9, p. 923). The U.S. Court of Appeals, Eighth Circuit, opined that these remarks "might well have better gone unstated," but were "not offensive enough to require a new trial" (p. 923). And the U.S. Court of Appeals, Tenth Circuit, found in *Hayes v. Murphy* (1981) that psychological testing was needed to determine a serious mental disease, disorder, or defect in a question of trial competency of a defendant sentenced to death. The court wrote in a footnote, "numerous cases have recognized the importance of evaluation by the Rorschach test" (p. 1012).

In *State of Maine v. Boone* (1982), the state Supreme Court referred to the Rorschach as "well-known." And in *Lopez v. State of Texas* (1982), the Rorschach findings were excluded because the testifying psychologist lacked "supervision and control" of the Rorschach administration by another psychologist (p. 78). The court went on to write,

the Rorschach is a standard personality and intelligence test ... commonly used as one of several diagnostic tools in the hands of a qualified and competent alienist. ... Indeed, the presence of any third person introduces an unnecessary variable to the results of the psychological procedures. The test itself never varies—only responses." (p. 81)

The Court of Appeal in Louisiana 2 years later found in *Lewis v. East Feliciana Parish School Board* (1984) that the Rorschach was one of several "professionally accepted tests and methods of evaluation" (p. 1279) in a case involving the dismissal of a tenured teacher.

1985–1995

The last decade of our search produced seven cases. The California Supreme Court in *People v. Coleman* (1985) noted that a prosecution psychiatrist attacked the

defense psychologist's use of the Rorschach test to determine past mental state, something the psychologist had not done. The Court did not comment further. And in *State v. Rimmasch* (1989) the Supreme Court of Utah found sexual abuse profiling of the alleged victim not inherently reliable, based in part on psychological testing. It went on to footnote, citing Ziskin (1975), that the reliability of "subjectively evaluated" psychological tests, including the Rorschach, was "not universally accepted" (p. 404).

In *R. J. D. v. State* (1990), the Court of Criminal Appeals of Oklahoma also raised the issue of external validity. In the case of a juvenile charged with first degree murder, the court wrote that the psychologist offered no explanation as to "how these responses to patterns created by inkblots indicated that appellant was not amenable to treatment" (p. 1126). It also wryly noted, "While courts must afford some deference to trained experts they are not required to surrender reason at the altar of expertise" (p. 1126). The Court of Appeals of New Mexico addressed the same issue in a different context, rape trauma syndrome. In *State v. Alberico* (1991), psychological testimony, based in part on the Rorschach findings, was not admissible to determine that a rape, in fact, had occurred.

One year later a state appeals court in Tennessee ruled that there was no violation of due process or equal protection when the Rorschach was administered by a psychiatrist (*Welch v. State*, 1992). The two most recent citations both affirmed and negated Rorschach test findings: In *Primeaux v. Leapley* (1993) the Supreme Court of South Dakota found that the Rorschach was one of several "recognized tests in the field of forensic psychology" (p. 273). In *Usher v. Lakewood Engineering & Mfg. Co.* (1994), however, an employment discrimination case, a U.S. District Court in Illinois granted the plaintiff's motion for a protection order against all psychological testing. The judge, citing his injection into the expert testimony area "in a more active sense" (p. 413) since *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, found that the plaintiff "adduced substantial information demonstrating the inadequacy of the correlation factors and the validity factors of all five of the tests in question" (p. 413). These tests included the MMPI-2, Rorschach, Thematic Apperception Test, Shipley, Sixteen Personality Factor, and Millon Clinical Multiaxial Inventory-III. The judge also noted that his decision provided "a level playing field" (p. 414) for the psychologist and the psychiatrist.

A RORSCHACH BY ANY OTHER NAME

We also found that the word *Rorschach* has seeped its way into the lexicon of our judiciary in some surprising guises—as a surname, a noun, an adjective, and even a verb. Don J. Rorschach, the City Attorney of Irving, Texas, accounted for a number of the legal citations that did not involve the test. We telephoned him, and he graciously informed us that his father's great uncle was, indeed, Dr. Hermann Rorschach. He had never personally met him.

Other cases likewise provided intriguing glimpses into additional connotations of the word. In a tire wear defect case, photocopies had the “clarity of a Rorschach inkblot” (*Sears Roebuck & Co. v. Roque*, 1980, p. 332). In a property theft case the criminal tool used by the defendant, a screwdriver, “had a yellow paint-like substance on the handle which was of a peculiar configuration like one of the Rorschach inkblots” (*People v. Riley*, 1981, p. 107). Both the Civil Rights Act of 1991 (*Savko v. Port Authority of Allegheny County*, 1992) and the Racketeer Influenced and Corrupt Organizations (RICO) Act (*In re: Integrated Resources Real Estate*, 1994) were considered so vague as to be “judicial Rorschach tests” (p. 1115). And racial gerrymandering was compared to the Rorschach as well as a “bug splattered on a windshield” (*DeWitt v. Wilson*, 1994, p. 1412).

The U.S. Court of Appeals, Fifth Circuit, struggled with the meaning of the word *prevailing*, and found it to have a “spongy meaning ... despite these Rorschach qualities, there are definable core limits” (*Smith v. Thomas*, 1982, p. 116). And the U.S. District Court in Puerto Rico even used it as a verb: “plaintiffs sought to use the discovery mechanisms to rorschach defendants” (*Rodriguez-O’Ferral v. Trebol Motors Corporation*, 1994, p. 35).

The most amusing findings, however, concerned sexuality and the Rorschach. The Court of Appeals of Utah, in a lengthy obscenity opinion (*City of St. George v. Turner*, 1991), found that the crude drawing of a woman’s genitals on a wall hanging in a retail store, “could just as easily be viewed as a beetle, a leaf, or a Zulu war shield. Or it might more closely resemble a fugitive ink blot from the Rorschach test” (footnote 2, p. 1189). Most remarkable was the dialogue that Judge Edward Curran of the U.S. Court of Appeals, District of Columbia, had with Dr. John Maher (the Witness [W]), a clinical psychologist at St. Elizabeth’s Hospital (*U.S. v. McNeil*, 1970).

- C: Is there anything in the Rorschach test that will lead a normal person to determine that there was a female organ involved?
- W: Yes, Your Honor.
- C: There is?
- W: Yes. Female breast is a good, plus response.
- C: There is nothing about a female breast in the Rorschach test. You are a clinical psychologist and you are telling me that as a result of looking at these ink spots there is a female breast in there?
- W: I didn’t say there was a female breast there. I said it is not abnormal to see a female breast.
- C: There isn’t?
- W: Female breast by standard, statistical analysis has been shown to be a frequent response of normal people and it is a good, plus response.
- C: A normal person looks at a Rorschach test and sees a female breast, right?

- W: Not every normal person, but it is not abnormal to do it. Many normal people do it.
- C: That's all. Step down.

Despite Dr. Maher's mistaken opinion that sex responses are frequent among normal people—they are given by just 4.3% of nonpatient adults (Exner, 1993)—we found the court's interest quite curious.

DISCUSSION

The Rorschach test, as a reliable and valid source of psychological data on an individual, is rarely questioned in various courts of appeal throughout the United States. Between 1945 and 1995 the Rorschach test was cited in 247 cases in state, federal, and military courts, averaging five times per year. Twenty-six cases were found (10.5%) in which the reliability or validity of Rorschach findings were an issue. In almost 90% of the cases, the admissibility and weight of Rorschach data were not questioned by either the appellant or the respondent and were important enough to be mentioned and discussed in the legal ruling by the court of appeal.

When the reliability or validity of the Rorschach test was an issue, it was the interpretation or findings derived from the test that were challenged. These challenges focused on three areas. In some instances the psychologist's inferences derived from the Rorschach data were too broad; for example, the test findings would be used to prove that a crime had been committed. In other instances the psychologist's inferences derived from the Rorschach data were too narrow; for example, the test findings would result in a diagnosis, but this inference would not be used to help explain the mental state of the defendant. In the remaining instances the psychologist's findings from the Rorschach data were irrelevant to the legal issue before the court; for example, the psychologist's testimony did not determine whether or not the defendant was sane at the time of the commission of the crime. These legal criticisms of the Rorschach are consonant with the opinion of Weiner (1994, 1995) that the instrument "can more appropriately be considered a method of generating data" (1995, p. 330), rather than a test, and its scientific validity rests on the methodological soundness of the inferences derived from the data and the research within which the Rorschach is embedded.

The published legal rulings over the past 50 years also suggest that courts have become more sophisticated in questioning the veracity of psychological tests, including the Rorschach, and are more willing to raise questions of concurrent, predictive, and construct validity. Somewhat surprisingly, when the issue of face validity was raised, usually by the prosecution, the courts were critical that the test was ridiculed. In only two cases was the Rorschach completely devalued as a psychological measure: in *Alto v. State* (1977) it was labelled a technique, not a

test; and in *Usher v. Lakewood Engineering & Mfg Co.* (1994) a protection order against all psychological testing was granted due to questionable validity. These two cases represent 0.8% of the legal rulings in which the Rorschach was cited or discussed.

On the basis of these findings we would recommend that psychologists who use the Rorschach in court pay particular attention to the inferences that they develop from the data. These inferences should be closely linked to one another, previously validated in published research, and consistent with other findings in the case derived from other sources of evidence. These other sources of evidence should typically include self-report of the examinee, historical and contemporaneous data independent of self-report, and other administered tests. The decision to use the Rorschach in a forensic case should also have some bearing on the psycholegal question that is to be addressed.

State, military, and federal judges are not scientists, and their opinions should not be considered a direct measure of the reliability and validity of the Rorschach. We leave that determination to the scientific community (Meloy, 1991; Weiner, 1996). We do conclude, based on our empirical findings, that the Rorschach has authority, or weight, in higher courts of appeal throughout the United States.

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