



# CONDUCTING FORENSIC EVALUATION INTERVIEWS

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# ABOUT US

## Amy

- Private Practice, Nebraska Department of Correctional Services, Illinois Department of Human Services
- SVP evaluations, Psychosexual evaluations for adolescents and children (previous work)
- Treatment and assessment for problematic sexual behavior in community, civil commitment, and correctional settings; males and females, adults, adolescents, and children
- ATSA Board of Directors, ATSA Fellow, Public Policy and Adult Clinical Communities of Practice, SAARNA member, Independent Certified Trainer Static-99R/Stable-2007/Acute-2007
- Consultant, Expert Witness – State & Federal Court

## Seth

- Private Practice – Counterpoise Wellness in Overland Park, KS
- Psychosexual, Psychological, Psychopathy, Competency, Waiver to Adult Evaluations
- Safer Society Contributor, ATSA Fellow, SAARNA member, Independent Certified Trainer Static-99R/Stable-2007/Acute-2007, Consultant, Expert Witness – State & Federal Court
- Professor of the Practice – University of Kansas



# DISCLAIMERS

- This session is intended to offer practical application of forensic evaluation
- Your jurisdiction or agency may have different policies/procedures you must follow
- This may not be relevant for those who have unlimited resources
- We don't know everything
- What works for us may work differently for you
- Some slides are wordy...



# RESOURCES INTEGRAL TO FORENSIC EVALUATIONS

- Specialty Guidelines for Forensic Psychology  
(American Psychological Association, 2013)
- Jurisdictional Ethics Codes



# COMPETENCE

## **2.01 Scope of Competence**

- When determining one's competence to provide services in a particular matter, forensic practitioners may consider a variety of factors including the relative complexity and specialized nature of the service, relevant training and experience, the preparation and study they are able to devote to the matter, and the opportunity for consultation with a professional of established competence in the subject matter in question.

(American Psychological Association, 2013)



# COMPETENCE

## **2.02 Gaining and Maintaining Competence**

- Competence can be acquired through various combinations of education, training, supervised experience, consultation, study, and professional experience. Forensic practitioners planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies that are new to them are encouraged to undertake relevant education, training, supervised experience, consultation, or study.
- Forensic practitioners make ongoing efforts to develop and maintain their competencies. To maintain the requisite knowledge and skill, forensic practitioners keep abreast of developments in the fields of psychology and the law.

(American Psychological Association, 2013)



# COMPETENCE

## **2.03 Representing Competencies**

- Forensic practitioners adequately and accurately inform all recipients of their services (e.g., attorneys, tribunals) about relevant aspects of the nature and extent of their experience, training, credentials, and qualifications, and how they were obtained.

(American Psychological Association, 2013)

# COMPETENCE

## **2.04 Knowledge of the Legal System and the Legal Rights of Individuals**

- Forensic practitioners recognize the importance of obtaining a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, rules, and precedents that govern their participation in legal proceedings and that guide the impact of their services on service recipients.
- Forensic practitioners aspire to manage their professional conduct in a manner that does not threaten or impair the rights of affected individuals. They may consult with, and refer others to, legal counsel on matters of law. Although they do not provide formal legal advice or opinions, forensic practitioners may provide information about the legal process to others based on their knowledge and experience. They strive to distinguish this from legal opinions, however, and encourage consultation with attorneys as appropriate.

(American Psychological Association, 2013)



# COMPETENCE

## **2.05 Knowledge of the Scientific Foundation for Opinions and Testimony**

- Forensic practitioners seek to provide opinions and testimony that are sufficiently based upon adequate scientific foundation, and reliable and valid principles and methods that have been applied appropriately to the facts of the case.
- When providing opinions and testimony that are based on novel or emerging principles and methods, forensic practitioners seek to make known the status and limitations of these principles and methods.

(American Psychological Association, 2013)

# REFERRAL QUESTION

## 10.01 Focus on Legally Relevant Factors

- Forensic examiners seek to assist the trier of fact to understand evidence or determine a fact in issue, and they provide information that is most relevant to the psycholegal issue. In reports and testimony forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, and address their opinions and recommendations to the identified psycholegal issues.
- Forensic practitioners are encouraged to consider the problems that may arise by using a clinical diagnosis in some forensic contexts, and consider and qualify their opinions and testimony appropriately.

(American Psychological Association, 2013)

# WHAT REFERRAL QUESTIONS CAN WE ANSWER?

- What is this individual's estimated risk to sexually reoffend? Commit workplace violence?
- Can the person understand the charges and assist counsel?
- Did the defendant's mental state at the time of the offense impair their capacity to understand the wrongfulness of their actions?
- In what setting can this person's need for treatment best be met?
- Is the individual capable of managing their own finances or personal affairs?
- Did an incident cause long-term psychological damage?
- Which placement serves the best interests of the child based on parental capacity and psychological functioning?
- Is a law enforcement officer or employee psychologically fit to carry a weapon or perform job duties?

# WHAT REFERRAL QUESTIONS CAN WE NOT ANSWER?

- Will he reoffend for certain?
- Does he meet the profile of a [domestic violence/sex] offender?
- Is this person legally insane/guilty?\*
- Does he belong in prison?\*
- Is s/he lying?

# DIG DEEPER?

- Referral sources may not always articulate RQ clearly
  - Statute
  - Attorneys
  - Judge/Court
  - Guardian Ad Litem
  - Probation/Parole
  - Department of Children/Families
- May have to explore further to refine and clarify
  - What question are you hoping to answer?
  - What information is being asked for?
  - What exactly are you wanting to know?



## EXAMPLES OF UNCLEAR RQ'S

- I just want you to tell me if this guy is “crazy.”
- He is weird; what's wrong with him?
- She's a bad parent and we don't want her son to live with her.
- An attorney *believes* the client is “crazy,” and wants it confirmed to prepare defense
- A judge wonders if there are mitigating circumstances (a mental disorder that is the reason he committed the crime)
- The client is *acting* “crazy” and the judge wants to rule out mental disorders

# FORENSIC VERSUS CLINICAL EVALUATIONS

- “Psych eval” versus forensic eval
- Primary difference between Forensic and Clinical evaluations:
  - Who the client is
  - Nature of the relationship between client and evaluator
    - ROI and Informed Consent process
  - Evaluative attitude and level of scrutiny applied to information obtained by the individual assessed
  - Differing areas of competency
    - GP MH versus SO specialty
  - “Therapeutic” focus versus “fact-finding” focus (Silovsky, 2000)

# FORENSIC VS. CLINICAL

Forensic	Clinical
Goal: obtain reliable and accurate information	Goal: assess and provide treatment of symptoms
Objectivity, neutrality, avoidance of biases	Empathy, therapeutic alliance, support
Court is client	Client is client
Limits to confidentiality	Traditional confidentiality
ROI explained prior to interview	Client's consent required for ROI
Reliability/competency of individual questioned	Competency of client not primary concern
Recorded?	Not recorded

# FORENSIC VS. CLINICAL

Mental Health Context	Legal Context
Results based on statistical analysis of group data, thus not exact (confidence intervals)	Absolutes (guilt/innocence; competent/incompetent)
Language = tentative, continuous	Language = definitive; discrete
Patient autonomy/care	Public safety/criminal justice procedures
Do no harm	Potential for trauma during process to achieve legal determination



# WHO IS THE CLIENT?

## **4.01 Responsibilities to Retaining Parties**

- At the initiation of any request for service, forensic practitioners seek to clarify the nature of the relationship and the services to be provided including the role of the forensic practitioner (e.g., trial consultant, forensic examiner, treatment provider, expert witness, research consultant); which person or entity is the client; the probable uses of the services provided or information obtained; and any limitations to privacy, confidentiality, or privilege.

(American Psychological Association, 2013)



# ROLES

- **Evaluee:** The person who is the subject of the objective and unbiased evaluation.
- **Referral Source:** The individual who referred the case to the expert witness. This may be through self-referral of the evaluee, family member, attorney, insurance company, or other source.
- **Payer:** The entity paying for the services provided by the forensic rehabilitation expert. This entity may be the evaluee, family member, attorney, insurance company, referral source, or other source.

(Barros-Bailey, et al., 2025)

# APA SPECIALTY GUIDELINES FOR FORENSIC PSYCHOLOGY

## **8.02 Access to Information**

- If requested, forensic practitioners seek to provide the retaining party access to, and a meaningful explanation of, all information that is in their records for the matter at hand, consistent with the relevant law, applicable codes of ethics and professional standards, and institutional rules and regulations.
- Forensic examinees typically are not provided access to the forensic practitioner's records without the consent of the retaining party. Access to records by anyone other than the retaining party is governed by legal process, usually subpoena or court order, or by explicit consent of the retaining party.
- Forensic practitioners may charge a reasonable fee for the costs associated with the storage, reproduction, review, and provision of records.

(American Psychological Association, 2013)

# EVALUATOR TO THERAPIST

## **4.02.01 Therapeutic-Forensic Role Conflicts**

- Providing forensic and therapeutic psychological services to the same individual or closely related individuals involves multiple relationships that may impair objectivity and/or cause exploitation or other harm. Therefore, when requested or ordered to provide either concurrent or sequential forensic and therapeutic services, forensic practitioners are encouraged to disclose the potential risk and make reasonable efforts to refer the request to another qualified provider. If referral is not possible, the forensic practitioner is encouraged to consider the risks and benefits to all parties and to the legal system or entity likely to be impacted, the possibility of separating each service widely in time, seeking judicial review and direction, and consulting with knowledgeable colleagues. When providing both forensic and therapeutic services, forensic practitioners seek to minimize the potential negative effects of this circumstance.

(American Psychological Association, 2013)



# INFORMED CONSENT

## **6.03 Communication with Forensic Examinees**

- Forensic practitioners inform examinees about the nature and purpose of the examination. Such information may include the purpose, nature, and anticipated use of the examination; who will have access to the information; associated limitations on privacy, confidentiality, and privilege including who is authorized to release or access the information contained in the forensic practitioner's records; the voluntary or involuntary nature of participation, including potential consequences of participation or non-participation, if known; and, if the cost of the service is the responsibility of the examinee, the anticipated cost.

(American Psychological Association, 2013)



# INFORMED CONSENT

## **6.03.02 Persons Ordered or Mandated to Undergo Examination or Treatment**

- If the examinee is ordered by the court to participate, the forensic practitioner can conduct the examination over the objection, and without the consent, of the examinee. If the examinee declines to proceed after being notified of the nature and purpose of the forensic examination, the forensic practitioner may consider a variety of options including postponing the examination, advising the examinee to contact his or her attorney, and notifying the retaining party about the examinee's unwillingness to proceed.

(American Psychological Association, 2013)

# INFORMED CONSENT

- Purpose of evaluation/interview, and evaluator's role must be clearly defined at onset of interview
- Inform limits to confidentiality, and releases of information
  - Standard suicidal/homicidal ideation, undetected victim mandatory reporting issues
  - Judge, attorneys, other relevant professionals with access to records
- Voluntary nature of interview?\*
- Explanation of process
- Obtain understanding from individual being evaluated and answer questions\*\*
- Request permission to proceed with interview
  - Document this in some way (informed consent form, in report)
    - "He stated that he understands the reasons for his current confinement, verbalized an understanding of the fact that he could potentially be referred for civil commitment as a Sexually Violent Predator, and agreed to participate in the interview."



# CRIMINAL EVALUATIONS

- Competency to Stand Trial (CST)
- Criminal Responsibility/Sanity (NGRI)
- Risk Appraisal – propensity for future violence, sexual violence, or threat to others
- Sentencing Mitigation – assesses factors for consideration during sentencing
- Can occur at 3 points in the criminal justice process:
  - Pre-conviction
  - Pre-sentence
  - Post-sentence



# CIVIL EVALUATIONS

- Child Custody Evaluations – best interests of the child in custody disputes
- Personal Injury/Emotional Damage – emotional/psychological harm resulting from trauma, accidents, or malpractice
- Testamentary Capacity – mental ability to execute a valid will
- Guardianship/Conservatorship
- Sexually Violent Predator (SVP) evaluations



# COMPETENCY EVALUATIONS

- Main Questions to Answer
  - Understanding of Charges and Potential Consequences
  - Understanding of the Trial Process
  - Capacity to Participate with an Attorney
  - Potential for Courtroom Participation
- Diagnoses
- Opinion

# COMPETENCY EVALUATIONS

- Always done Pre-Conviction
- Possible Outcomes
  - **Competent to Stand Trial**—the client has no mental health disorder that interferes with his/her ability to proceed to trial
  - **Not Competent to Stand Trial**—the client's mental health diagnoses prevents him/her from proceeding to trial
    - **Can be Restored to Competency**—through psychoeducation the client will be able to become competent
      - 81-88% can be restored to competency in a matter of months (Murrie, et. al 2023)
    - **Cannot be restored to Competency**—no amount of therapy or education will make this person able to stand trial

# LACK OF MENTAL STATE EVALUATIONS

- Always done Pre-Conviction
- Usually done during the Trial Phase
- Possible Outcomes (to be determined by trier of fact)
  - Client's psychiatric diagnosis excludes criminal responsibility
    - This is VERY rare
    - Client is committed to a State Psychiatric Hospital for care and treatment
  - Client's psychiatric diagnosis does not exclude criminal responsibility



CHILD CUSTODY & FAMILY/DOMESTIC ISSUES

# CHILD CUSTODY EVALUATIONS

- Psychologists will occasionally be asked to do a Child Custody Evaluation
- The role of the psychologist is to provide a neutral perspective on the case and the fitness of each parent, as well as strengths/weaknesses
- Majority of Child Custody Evaluations are court-ordered
- Primary goal: evaluate the family functioning, parenting styles, and relationships
- Secondary goal: talk to the parties and describe what the evaluator sees
- Courts want to know opinion as to custody arrangement recommendations

# PARTICULARS OF CHILD CUSTODY EVALUATIONS

- One of the most expensive evaluations you can do (collateral)
- So why wouldn't you want to do these all the time?????
- 35% receive at least one board of ethics complaint
- 10% receive at least two complaints
- 10% get sued for malpractice
- Often emotionally volatile, i.e., difficult to obtain objective information
- Complicated by relationships between parents



# PARENTING EVALUATIONS

- APA Guidelines: “Evaluations focus upon skills, deficits, values, and tendencies relevant to parenting attributes and a child’s psychological needs.”
- Psychologist needs to stay current on: (Brantley et al., 2022)
  - Forensic psychology
  - Family systems
  - Child & Adult development & pathology
  - Substance misuse
  - Family violence
  - Assessment procedures for adults and children
- The more difficult the case, the more the judge will rely on the evaluation (Boccaccini & Murrie, 2024)



## MOST EXTREME CASES


- Termination of Parental Rights
- Court decides that a parent is unfit to care for the child and severs the relationship legally
- At the conclusion of that proceeding, the parent no longer has any rights or responsibilities to the child
- The threshold is extremely high
- Psychologists are usually involved in these cases and do parenting evaluations, substance abuse evaluations, sexual abuse evaluations

# CHILD CUSTODY EVALUATIONS

- Many attorneys, courts, and psychologists question the reliability of these evaluations
- Still...courts often ask psychologists to address the ultimate issue
- The ultimate issue in child custody cases is: who should have custody of the child?
- Most Psychologists are uncomfortable with this, but some choose to weigh in
  - Specific recommendations on who gets custody and how much visitation is allowed

# PSYCHOSEXUAL EVALUATIONS

- Can be criminal or civil (SVP)
- Referral questions
  - Statutory criteria-specified
  - What is this individual's risk for sexual reoffense?
  - What is the least restrictive environment for this person (treatment, supervision)
- Focus of evaluation often narrowly-focused on sexual issues and/or question of sexual risk versus broader psychological functioning
- Requires competence in areas of sexual offense risk assessment and treatment
  - Training specific to risk instruments, knowledge of sexual offense dynamics, associated mental health diagnoses, etc.
  - Training in normative vs. harmful sexual arousal/interest patterns



# BASIC COMPONENTS OF EVALUATION PROCESS

- Approach evaluation with objectivity and fairness
- Referral Question
- Informed consent
- Sources of information
- Interview
- Testing/Actuarials
- Domains of assessment (developmental history, relationships, medical/MH history, IQ, education/employment, sexual history, client assets/PFs)
- Collateral information/interviews



# THIS INFORMATION CAN COME FROM

- Records
  - Criminal History, court records/reports, police reports, victim statements, witness statements
  - Therapy, hospital, school, employment records
- Clinical Interview
  - Biopsychosocial information
    - Developmental, family, ACEs, education, employment, substance use, peer relations, medical/mental health, etc.
    - Think LSI-R domains
    - Sexual history if applicable
  - RQ-specific focused interview
- Collateral Interviews



# RECORD REVIEW

- Thorough record review - prior to evaluation
  - Lays the groundwork for interview questions or follow-up
  - Reduces time in clinical interview
- To the extent possible, pull things from records
  - To help guide interview questions
  - To aid in scoring risk instruments—get idea of baseline historical/dynamic risk
- This helps with efficiency



# THE CLINICAL INTERVIEW

- Goal is to obtain information sufficient to:
  - Provide color and context to the individual being evaluated
  - Score measures of dynamic risk comprehensively
  - Substantiate diagnoses
  - Support conclusions
  - Justify recommendations
- Purposeful and intentional
- RQ-dependent

# THE CLINICAL INTERVIEW

How might your interview change depending on the referral question? Setting?

- Interviews should vary according to
  - Referral question
  - Responsivity issues
  - Setting
  - Time allotment
- No two interviews will be the same
- May have multiple contacts





# PRELIMINARY CONSIDERATIONS

- Private, safe environment
  - For you and the evaluatee
- To record, or not to record?
  - No “right” answer, but have consistent policy
- Interview notes
  - Typed
  - Hand-written – shred later? Again, consistent policy
  - Either way, be professional, even in your notes
  - Everything is potentially subpoena-able

# DIFFERENT WAYS TO ASK

- Types of questions
  - Open-ended versus closed
    - “Tell me about your criminal history.”
    - “Were you convicted of Sexual Assault in 2017?”
  - General versus focused
    - “What kinds of things do the voices say?”
    - “Do the voices tell you to kill yourself?”
  - Leading questions
    - “When you view pornography, how often is your child at home with you?”
  - Follow up questions
    - Sometimes, asking a question a different way results in a different response
    - Can be helpful to assess consistency in responding, or understanding

# TYPES OF INTERVIEWS



## **Structured**

Standard set of questions designed for all interviews



## **Semi-Structured**

Questions that cover a specific theme but allow for variations



## **Unstructured**

Open-ended questions, Motivational Interviewing, conversational

# CHARACTERISTICS OF THE INTERVIEWER

- William Marshall and colleagues
  - Warm
  - Empathic
  - Rewarding
  - Directive

(Marshall et al., 2005)



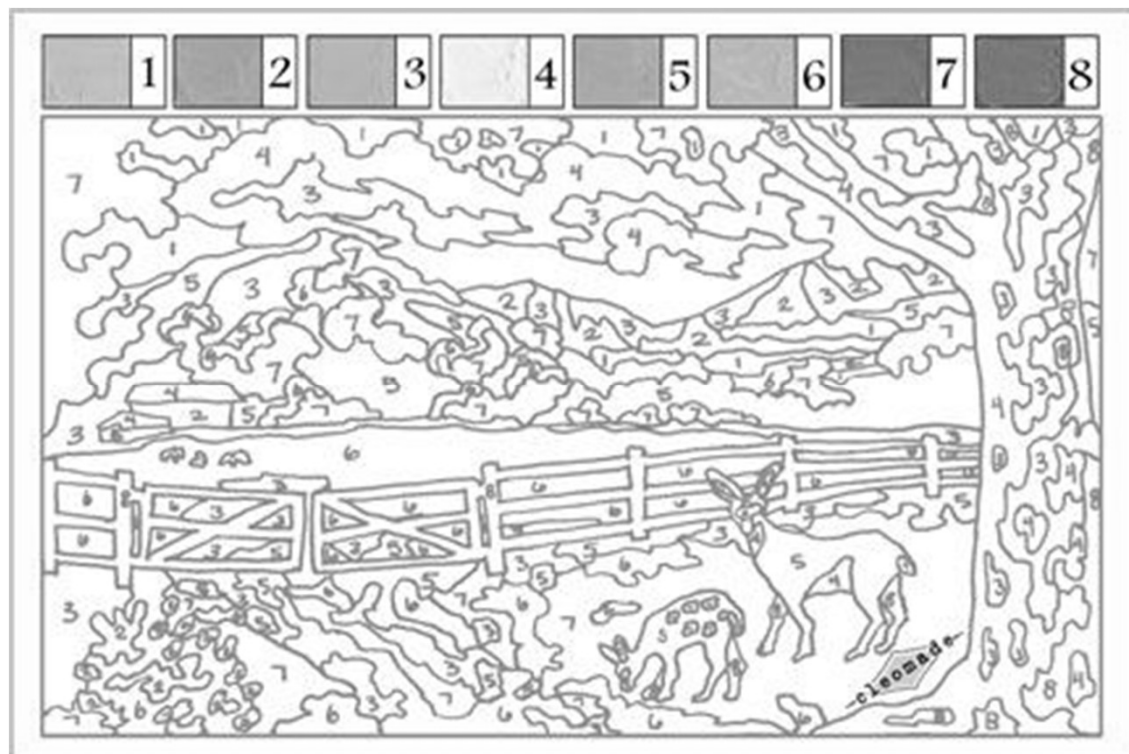
- Problem: Many people think they have these qualities, but don't



# THERAPIST STYLE

- Confrontational approaches don't work well – particularly if in the 'pre-contemplation' stage (which is where most are during evaluation stage)
- Informed consent process can offer an opportunity to establish rapport
- Motivational Interviewing
  - Seeks to 'draw out' responses
  - Open-ended questions
    - Difficulties – client may ramble, time consuming

# ~~PAINT BY NUMBERS~~



# THE COLUMBO METHOD



- Tone, demeanor, flexibility
- Background vs. foreground
- Going where the little trees take you
- What story is the person telling?



# INTERVIEW STRATEGIES

- Interview template?
  - Consistency
  - Clinical timing – when to stick to the script, or dig a little deeper
  - If assessment instrument has interview guide, this can help guide questions
- Motivational Interviewing
- Don't assume the interviewee understands our jargon (“masturbate,” “hallucination” etc.)
  - May need to reword
- Don't interpret meaning unless ask specifically (“age appropriate” “normal”)
  - What does “age appropriate” mean to you?
  - What does “normal” look like for you?



# ASSESSMENT VS. TESTING

- *Assessment* and *testing* are not synonymous
- **Assessment**—The process of evaluating an individual's strengths, weaknesses, psychopathology
- **Testing**—Psychological or medical tests designed to provide insight into behavior for the purposes of aiding in diagnosis
- Testing is one part of the assessment process
- Assessment is continuous (it is always ongoing)
- Testing provides a snapshot in time
- Assessment does not always include testing

# TEST SELECTION

## 10.02 Selection and Use of Assessment Procedures

- Forensic practitioners use assessment procedures in the manner and for the purposes that are appropriate in light of the research on or evidence of their usefulness and proper application
- Assessment in forensic contexts differs from assessment in therapeutic contexts in important ways that forensic practitioners strive to take into account when conducting forensic examinations. Forensic practitioners seek to consider the strengths and limitations of employing traditional assessment procedures in forensic examinations
- When the validity of an assessment technique has not been established in the forensic context or setting in which it is being used, the forensic practitioner seeks to describe the strengths and limitations of any test results

(American Psychological Association, 2013)

# TEST SELECTION

- Depends on the referral question
  - Is testing necessary to answering the referral question?
  - Does testing help to determine the “N” and “R”?
  - Is testing required (by statute or jurisdictional standard)?
- Empirically supported/validated
- Training requirements (competency?)
- Justification of choices in court
  - Why did you use or NOT use?



# MISUSE OF TESTING

- Doing a PCL-R on every psychosexual evaluation regardless of pathology
- “Loading up” on tests with the intent of making the evaluation appear more robust
- Selecting only those tests which support a preconceived hypothesis
- Anything that is not germane to the referral question
- Doing a Static-99R on a Possession of CSEM (category B) offense only
- Using outdated assessment instruments (SONAR, MMPI-2)

"Report writing is fun", said no one ever.



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# YOUR AUDIENCE



# ALSO YOUR AUDIENCE



# KNOW YOUR AUDIENCE

- Forensic evaluation report writing is like learning a new language that is tailored to the intended audience
- Understandable language
- Minimize jargon
- Be careful with acronyms and initialisms
- Don't over-reach or over-step





# FORENSIC REPORTS

- All evaluations have two parts:
  - The evaluation
  - The written report
- Forensic reports are different from other reports
  - Most psychological reports are kept confidential
  - Forensic reports always go to a legal person (attorney, judge)



# PURPOSE OF THE REPORT

- The Forensic report is a professional document
- The purpose is to:
  - Summarize the key parts of the evaluation (testing and interview)
  - Establish diagnosis
  - Report risk factors
  - Present recommendations for further treatment
  - Provide the decision-maker with direction on what to do next



# PURPOSE OF THE REPORT IS NOT

- To substantiate or refute allegations, or
- To determine guilt or innocence, or
- To give an opinion as to whether or not a crime was committed

# YOUR DATA POINTS, PUZZLE PIECES

- Psychological testing (personality, intelligence testing, etc.)
- Collateral information (affidavit, police report, medical report, etc.)
- Clinical Interview
- Documentation
  - Informed consent, release of information, forensic informed consent
- Collateral information
  - Record review, collateral interviews (?)
- Assessment instruments
  - Actuarials/Risk assessment\*
- Diagnosis (if applicable)
- All are equally important
- Which of these yields the most information to address the referral question in a given evaluation?

- We should report strengths AND limitations of assessment instruments
- Document transparently (if interpreter used, if technical issues, etc.)
- Give yourself an 'out'
- Qualify the data
- Barely enough info
  - "should be re-scored when additional data becomes available"
- Not enough info
  - "should be scored when sufficient data becomes available"





# THEMES AND PATTERNS

- Recognize and document patterns
- Note areas of convergence and divergence of information
  - Provides support for your conclusions and recommendations
- Past is prologue
  - Family of origin + education + employment + relationships + criminal history

# ARTICULATING CONCLUSIONS, CLINICAL RECOMMENDATIONS, AND OPINIONS

- Point-by-point
- Summary and Conclusions
  - Paragraph restating referral question, charges/conviction, eval content
  - Paragraph summarizing the intent of evaluation
  - Summary of
    - Clinical interview and psychological testing findings\*
    - Risk assessment
    - Treatment needs, protective factors/strengths
    - Responsivity issues
    - Diagnosis, if applicable
  - Considerations regarding evidence-informed decision making

# ARTICULATING CONCLUSIONS, CLINICAL RECOMMENDATIONS, AND OPINIONS

- Restate major data points/components of evaluation/report
- Nothing in conclusion section should be new; should be logical flow of evidence, culminating in opinion/conclusion/recommendations
  - Story – beginning (referral question); middle (supporting evidence); end (conclusion/opinion/recommendation)
- Edit your own work; examine your own writing style, revise/develop/improve
- We make recommendations, and/or render opinions, others make decisions
- Recommendations/Opinions are often most important part of report
  - It may be the only thing a decision-maker reads

# OPINIONS LINKED TO REFERRAL QUESTION

## **11.04 Comprehensive and Accurate Presentation of Opinions in Reports and Testimony**

- Consistent with relevant law and rules of evidence, when providing professional reports and other sworn statements or testimony, forensic practitioners strive to offer a complete statement of all relevant opinions that they formed within the scope of their work on the case, the basis and reasoning underlying the opinions, the salient data or other information that was considered in forming the opinions, and an indication of any additional evidence that may be used in support of the opinions to be offered. The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed.
- Forensic practitioners are encouraged to limit discussion of background information that does not bear directly upon the legal purpose of the examination or consultation. Forensic practitioners avoid offering information that is irrelevant and that does not provide a substantial basis of support for their opinions, except when required by law

(American Psychological Association, 2013)



# RECOMMENDATIONS

- Go beyond a list of “Thou shalt not”
- Provide a road map to success
- Think immediate, short-term, and life-course
- Tailored to individual, and yes, the RQ
- Provide for course correction

# SUBJECTIVE VS. OBJECTIVE

- Subjective: Belongs to the thinking person rather than the object of thought
  - Originates from personal values or beliefs
  - Preferences for music, art, fashion, food
  - Varies from one person to another
  - Written in first person
  - "I believe..."; "Based on my experience..."
- Objective: Exists outside the mind
  - Not influenced by feelings
  - Neutral stance
  - Written in third person
  - "Based on his demonstrated behaviors..."; "It is this evaluator's opinion..."



# CREDIBILITY IS THE CURRENCY WE TRADE IN

## **1.02 Impartiality and Fairness**

- When conducting forensic examinations, forensic practitioners strive to be unbiased and impartial...does not preclude forceful presentation of the data and reasoning upon which a conclusion or professional product is based.
- When offering expert opinion to be relied upon by a decision maker, providing forensic therapeutic services, or teaching or conducting research, forensic practitioners strive for accuracy, impartiality, fairness, and independence. Forensic practitioners recognize the adversarial nature of the legal system and strive to treat all participants and weigh all data, opinions, and rival hypotheses impartially.

(American Psychological Association, 2013)

# APA FORENSIC GUIDELINES

## **11.01 Accuracy, Fairness, and Avoidance of Deception**

- When in their role as expert to the court or other tribunals, the role of forensic practitioners is to facilitate understanding of the evidence or dispute.
- Consistent with legal and ethical requirements, forensic practitioners do not distort or withhold relevant evidence or opinion in reports or testimony. When responding to discovery requests and providing sworn testimony, forensic practitioners strive to have readily available for inspection all data which they considered, regardless of whether the data supports their opinion, subject to and consistent with court order, relevant rules of evidence, test security issues, and professional standards
- When providing reports and other sworn statements or testimony in any form, forensic practitioners strive to present their conclusions, evidence, opinions, or other professional products in a fair manner. Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny or subvert the presentation of evidence contrary to their own position or opinion

(American Psychological Association, 2013)

# APA FORENSIC GUIDELINES

## **11.02 Differentiating Observations, Inferences, and Conclusions**

- In their communications, forensic practitioners strive to distinguish observations, inferences, and conclusions. Forensic practitioners are encouraged to explain the relationship between their expert opinions and the legal issues and facts of the case at hand.

## **11.03 Disclosing Sources of Information and Bases of Opinions**

- Forensic practitioners are encouraged to disclose all sources of information obtained in the course of their professional services, and to identify the source of each piece of information that was considered and relied upon in formulating a particular conclusion, opinion or other professional product.

(American Psychological Association, 2013)

# OBJECTIVITY THROUGHOUT

## Referral Question

- Understanding role from the beginning, only taking the case when competent

## Test Selection

- Choosing objective instruments that have solid empirical support, good validity/reliability

## Interview Topics

- Assess responsivity issues, protective factors, alternative hypotheses

## Report-Writing

- Conclusions and recommendations informed by evidence *not by experience*

## Testimony

- Not personalizing cross-examination

# SEVEN WAYS TO INCREASE CREDIBILITY

1. Don't write anything you cannot back-up on the witness stand
2. Don't write anything that is not relevant to referral question, inflammatory, or pejorative ("predator")
3. Make it formal (don't use sentence fragments or the word "client"), but understandable (don't use a 10-letter word when you can use a 5-letter word)
4. Be consistent with tense, formatting, and spacing
5. Use only relevant assessment measures
6. Write in an objective style
7. Cite sources

# TEN MOST FREQUENT FAULTS IN FORENSIC REPORT WRITING

## 1. **Opinions without sufficient explanations (56%)**

Major interpretations or opinions were stated without sufficiently explaining their basis in data or logic (regardless of whether the report's data could have sustained the opinion)

## 2. **Forensic purpose unclear (53%)**

The legal standard, legal question, or forensic purpose was not stated, not clear, inaccurate, or inappropriate

## 3. **Organization problems (36%)**

Information was presented in disorganized manner (usually without a reasonable logic for its sequence)

(Grisso, 2010)

# TEN MOST FREQUENT FAULTS IN FORENSIC REPORT WRITING

## 4. **Irrelevant data or opinions (31%)**

Data and/or some opinions included in the report were not relevant for the forensic or clinical referral questions

## 5. **Failure to consider alternative hypotheses (30%)**

Data allowed for alternative interpretations, while report did not offer explanations concerning why they were ruled out (often response style/malingering alternative, sometimes diagnostic)

## 6. **Inadequate data (28%)**

The referral question, case circumstances, or final opinion required additional *types* of data that were not obtained or were not reported, and for which absence was not explained in report

(Grisso, 2010)

# TEN MOST FREQUENT FAULTS IN FORENSIC REPORT WRITING

## **7. Data and interpretation mixed (26%)**

Data and interpretations frequently appeared together in section that reports data

## **8. Over-reliance on single source of data (22%)**

An important interpretation/opinion relied wholly on one source of data when corroborating information from multiple sources was needed (often over-reliance on examinee's self-report)

## **9. Language problems (19%)**

Multiple instances of jargon, biased phrases, pejorative terms, or gratuitous comments

## **10. Improper test uses (15%)**

Test data were used in inappropriate ways when interpreted and applied to the case, or tests were not appropriate for the case itself

(Grisso, 2010)



# BEST PRACTICE CONSIDERATIONS

- Foundational validity of the assessment
- Validity of the assessment as applied
- Management and mitigation of bias
- Quality assurance of process and report
- Appropriate communication of data, results, and opinions
- Consideration of limitations and assumptions
- Weighing alternative views or disagreements
- Adherence with ethical obligations, professional guidelines, codes of conduct, and rules of evidence.

(Neal et al., 2022)



# THANK YOU!

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