

EFFECTIVE FORENSIC REPORTS AND DOCUMENTATION: PITFALLS, CREDIBILITY AND EVIDENCE RULES

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Federal Rules (see Kane, 2006)

- Federal Rule of Evidence 704, or its state equivalent, permits experts in civil cases to state opinions regarding the ultimate issue (e.g., whether the alleged trauma caused the psychological damage identified). **The expert must be prepared to provide the reasoning that led to reaching that conclusion, and the information must be deemed helpful to the fact finder if it is to be admitted** (Shuman, 1994a, 2003 supplement).

Federal Rule of Evidence 702

- In 1993, the U.S. Supreme Court held that the general acceptance test (*Frye v. United States*) was superseded by the Federal Rules of Evidence (FRE) (2004) and that general acceptance was not a necessary prerequisite for admissibility of expert testimony under Federal Rule of Evidence 702. The Supreme Court held that “all relevant evidence is admissible.”
- “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....” (Kane, 2006).

What’s the Difference Between Clinical and Forensic Reports?

“A forensic report, unlike a clinical report, is written for the benefit of the court and is typically about the subject rather than for the subject. As the primary work product of forensic evaluations, forensic reports usually influence the court’s decision. Because of their importance, they require more care than an average report” (Brannick, 2015, p. 4).

As cited in Brannick (2015), the [forensic] report should, therefore, be written with “clarity, precision, and artistry” (Griffith, Stankovic, & Baranoski, 2010, p. 33) to best assist the court.

Purpose of a Forensic Report

- The forensic evaluator must be aware of the purpose of the report and direct the narrative accordingly. A forensic report is intended to inform and influence the court about an assessment subject, specifically in reference to the subject's psychological functioning and behavior (Brannick, 2015; Griffith et al., 2010; Gudjonsson & Haward, 1998; Reid, 2011).
- The written report, either alone or with accompanying testimony, often significantly influences the outcome of a legal conflict (Brannick, 2015; Griffith et al., 2010)

Key Factors in Good Report Writing

- In recent years, however, report writing commentators have made it clear that forensic reports **must describe how one's opinion is supported by one's clinical data, and the logic with which the evidence leads to the forensic opinion** (e.g., Conroy, 2006; Heilbrun, 2001; Melton et al, 2007; Wettstein, 2010).
- Although clinicians might feel compelled to address clinical matters, the forensic report should focus only on the psycho-legal question before the court. A forensic report that offers excellent clinical recommendations but fails to effectively address the psycho-legal question is "unhelpful at best and harmful at worst" (Gagliardi & Miller, 2008, p. 542).

What's the Best Report Structure?

- According to Brannick (2015), there are several different opinions on the structure of a report, and no one way is the correct way. Rather, the report "should be written in a manner that increases the likelihood that it will be read in its entirety" (Ackerman, 2006, p. 60).
- "While brevity can improve the likelihood the report will be read from beginning to end, logical organization and a well-supported argument make the report an easier read" (Brannick, 2015, p.10).
- Reid (2011) suggests asking the referring party to provide a specific list of referral questions to guide the report and keep the writing on point.

Report Structures (Direct from Brannick, 2015)

Procedure-by-Procedure

- *Present the information gathered, and then using that information to discuss the reasoning process that led to the opinion (Griffith et al., 2010).*
- *When using this format, all the information gathered is grouped by source. For instance, an interview with a collateral contact would be discussed in a single paragraph, as would the data from a particular test (Karson & Nadkarni, 2013).*
- *This approach makes it clear where the information was obtained, it is less integrative than other approaches.*

Report Structures (Direct from Brannick, 2015)

Procedure-by-Procedure (cont'd)

- *The information gathered, or the findings, are usually broken into a few different categories, such as the introduction, the gathered history, behavioral observations, and/or mental status (Allnutt & Chapalow, 2000; Griffith et al., 2010). Headings can be particularly useful in differentiating data and making the report more reader friendly (Resnick & Soliman, 2012).*

Report Structures (Direct from Brannick, 2015)

Issue-by-Issue

- *This format allows the writer to offer information in a structure based upon a particular theoretical orientation. For instance, all the information gathered might be grouped into categories such as intelligence, problem-solving skills, mental health functioning, etc. (Karson & Nadkarni, 2013).*
- *This structure allows for integration of the data in a manner that can be clinically, if not necessarily legally, relevant (Karson & Nadkarni, 2013).*

Report Structures (Direct from Brannick, 2015)

Point-by-point

- *In this type of report, the data become evidence for a series of assertions that, collectively, generate an argument that answers the referral question (Karson & Nadkarni, 2013).*
- *This type of report tends to get to the heart of the matter as concisely as possible while remaining defensible in court, because there is sufficient evidence for each opinion and all data that are unnecessary for a particular assertion are excluded.*

Writing and Content

According to Brannick (2015), technical language to monitor and not overuse include:

- Overuse of acronyms. It is a mistake to assume that the reader will always understand an acronym.
- Psychological jargon. This might include referencing psycho-legal standards or therapeutic modalities without explanation, or including highly technical descriptions of data and interpretation.

As a good rule of thumb, the level of difficulty "should be no greater than that in an average newspaper. In fact, writing the report as if it were a newspaper article, not a clinical report, is close to an ideal frame of reference" (Gagliardi & Miller, 2008, p. 545).

Introductory Material (see Grisso, 2010)

- Provide accurate information on the examinee's identity and dates of evaluation.
- Describe the manner in which the examinee was informed of the purpose of the evaluation and limits of confidentiality.
- List all sources of data for the evaluation.
- Clearly state the legal standard that defines the forensic purpose of the evaluation, including the specific questions the examiner was asked to address.

Organization and Style (See Grisso, 2010)

Direct from Grisso, 2010:

- *Organize the report in a manner that is logical and assists the reader's understanding.*
- *Report only data, not inferences, in one data-based section of the report.*
- *Report inferences and opinions in another section, which uses the earlier data but offers no new data.*
- *Use language that minimizes the potential for bias or the appearance of gratuitous evaluative judgments.*
- *Use language that will be understood by non-clinicians, taking care to simplify complex concepts and professional technical terms.*
- *Attend to professional appearance of the document, avoiding typographical errors, incomplete sentences, and colloquialisms.*

Data Reporting (Grisso, 2010)

Direct from Grisso, 2010:

- *Obtain and report all data that would be important when addressing the referral question.*
- *Report only those data that are relevant for the forensic referral question.*
- *Clearly identify the sources of various data as the data are described.*
- *Avoid inclusion of self-incriminating data in pre-trial reports of evaluations involving defendants with open criminal charges.*
- *Include multiple sources of data, whenever possible, when describing events, behaviors, and examinee attributes. Report efforts to obtain data that ultimately were not obtained and may have been relevant for the case.*

Interpretations and Opinions (Grisso, 2010)

Direct from Grisso, 2010:

- *Address the forensic question that was asked in the referral process.*
- *Address only the clinical and forensic questions that were asked in the referral process.*
- *Provide a clear explanation for every important opinion or conclusion that you offer, summarizing the relevant data and how they logically support the opinion.*
- *Identify alternative interpretations that might be considered, and explain how the data were used to weigh these interpretations against the opinion you are offering.*
- *Describe any important ways in which one's data or interpretations leave room for error or alternative interpretations.*
- *Produce interpretations and opinions that are logical and internally consistent (not contradictory).*
- *Use multiple sources of data to seek support for a hypothesis. When opinions or recommendations require specialized knowledge (e.g., medical conditions or their treatment), express opinions only on matters for which you are qualified and competent.*
- *When using examinee self-reported data as a basis for an opinion, offer the opinion only when other reasonably reliable sources of data offer corroborative or logically consistent support.*

Report Brevity

- “In general, reports that are both concise and precise are best. They should include all relevant information, but no superfluous information, and they should encourage the reader to keep reading. In some cases, brevity can encourage a reader to start reading” (Brannick, 2015, p. 13).
- According to Ackerman (2006), there are three generally acceptable report lengths, depending on the request of the referring party: *(cont'd next slide)*

Report Brevity

According to Ackerman (2006), there are three generally acceptable report lengths, depending on the request of the referring party:

1. Short reports are approximately three pages. These reports are essentially the conclusion section of a report, without the preceding data, along with recommendations.
2. The standard report is typically somewhere between 2 and 10 pages, depending on the depth of testing conducted. This type of report would include a background history, test results, and conclusions.
3. Finally, the third, and least used, type of report is a comprehensive report, which can be upwards of 30 pages. This type of report should typically not be used unless the referring party specifically requests it or it is mandated by statute. For instance, SVPs, MDOs, QME and some custody evaluations tend to be quite lengthy to include numerous questions and issues that must be answered.

Ten Most Frequent Faults in Forensic Report Writing

Per Grisso (2010), a sample of 62 forensic reports being used for Board Certification highlighted the following most frequent faults in forensic report writing:

Note: (Percent of Reports in Which They Were Identified) – Directly cited:

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)*

Ten Most Frequent Faults in Forensic Report Writing (Grisso, 2010)

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.*

Ten Most Frequent Faults in Forensic Report Writing (Grisso, 2010)

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.*

Additional Resources

- APA Specialty Guidelines for Forensic Psychology - <https://www.apa.org/practice/guidelines/forensic-psychology>
- American Academy of Psychiatry and the Law **Practice Guideline for the Forensic Assessment** http://jaapl.org/content/43/2_Supplement/S3
- American Psychology-Law Society. (2011). Specialty guidelines for forensic psychology. <https://www.apa.org/practice/guidelines/forensic-psychology.pdf>
- Specialty guidelines for forensic psychology. (2013, January). <http://www.apadivisions.org/division-41/about/specialty/2006-draft.pdf>