

How To Determine Whether A Family Report Is Scientific

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There are a number of factors that can be considered as relevant in evaluating the scientific validity of a report dealing with family issues. Below are some of the major factors in considering how and when to accept a report as being scientific. The factors mentioned were developed by an analysis of reports issued primarily in custody cases. However, many of these factors are relevant to other areas of family law.

Science is supposed to deal with objective data that are gathered in a certain fashion. Both the data or information and the process of gathering the data are crucial in order to formulate a conclusion or opinion. An analysis of forty written reports and subsequent testimony related to them reveals that they often do not meet the criteria listed below. A fuller understanding on the part of judges, attorneys, mediators and conciliators, as to the content and structure of a scientific report, would aid their ability to question the acceptability of reports as well as to put on the record their own reports which meet scientific criteria.

1. *A Full History* — In order for a report dealing with family issues to be credible, it should reveal that the expert had taken an appropriate social/psychological/psychiatric/educational/or medical history. The history includes questions that deal with background factors of the parties involved. Mental health history, history of parenting skills, history of parent/child interaction, history of abuse, history of the involvement of non-family members, history of counseling or therapeutic intervention, history of medical considerations, history of educational progress or regress, history of attempts to negotiate or solve the problem outside

of the legal context and other areas should be reviewed.

History can be viewed as a context within which the present dilemma operates. History is not always predictive, but reveals the action of the parties in the past. There is a saying amongst historians that those who do not know history are doomed to repeat it. Amongst the behavioral scientists it might be added that even those who know history may repeat it anyhow. However, the context within people's lives includes a consideration of their past events, attempts to solve problems and parties involved in these events. Within most of the areas of behavioral observation and analysis, it is considered unacceptable to discuss a problem without understanding the historical materials.

2. *Credentials of the Author of the Report or the Expert Testifying on the Report* — Reports have to be considered in relationship to the credentials of the author. The credentials of social and behavioral scientists may vary greatly, both in terms of level and type of credentials. In terms of the level, the individual may have a Bachelors Degree, Masters Degree, a Doctoral Degree or even post-doctoral study. The content area of their study could be extremely varied and they include clinical psychology, psycho-educational processes, psycho-metrics (psychological tests and measurements), sociometry (social tests and measurements), psychiatry, sociology, social work, family therapy and counseling, family mediation, pastoral counseling, sex therapy, and many other disciplinary backgrounds.

An expert should be able to issue opinions within the domain of their speciality. For example, an individual who has training in both individual analysis of behavior and group analysis can issue opinions on both. However, a psychologist with no training in family life analysis (but some do have this training) would not be completely credentialed to comment on the process and function of the family. Conversely, a sociologist who does not have training in individual analysis (but some do have this) could not

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comment on the psychodynamics involved in some cases. It would be very important to have the author of the report or the witness indicate specifically their domains of expertise and confine their comments accordingly.

One of the most useful experts to the court is an expert who has facility in a number of domains and can discuss the relationship between those domains. For example, a social psychiatrist may have expertise in medicine, individual analysis of behavior from a psychiatric point of view and knowledge of the social (or group) factors in behavior. Similarly a social-psychologist may be able to discuss both social and individual factors in a case.

In analysis of credentials one must consider both the formal academic training as well as the clinical training and experience. Some individuals have obtained significant training after their formal degree that would lend weight to them having credentials in that area or an allied area.

Scholarship is also important. Popular vs. scholarly publications should be differentiated.

An analysis of credentials for scientific purposes should include formal academic training, clinical or experiential training, research training and experience and authorship of articles or books in journals or publications that are accepted by other behavioral and social scientists. Presentations at professional societies are also evidence of peer acceptance.

Attorneys should know that the disciplinary lines in terms of content areas are fuzzed today. This means that psychologists *may* have knowledge of social material and sociologists have knowledge of psychological material and both *may* have training in each others' discipline to some degree. Titles are not self-explanatory. A psychologist might be an expert in cults and know nothing of family life issues. A sociologist may be an expert in industrial relations and know nothing of behavioral patterns in families. A psychiatrist may treat only individuals and have limited experience with families or a social unit.

An important factor in reviewing the credentials of a "scientific expert" is to determine if they are always in the adversarial position. Some experts have only testified for one side or the other. Pursuing their sense of independence also lends credibility to their application of scientific knowledge. Questions such as "have they ever been appointed by the courts?" "Have they

ever been recommended by two opposing attorneys for an independent evaluation?" These are both important questions. The phrases "hired gun," "opinions for sale," or "whore" are common in the informal discussions that attorneys often have about experts.

3. *The Ability to Duplicate or Replicate the Findings* — One of the basic tenants of science is that data are developed through the use of procedures and methods that allow for the replication of the processes and the findings. This means that interviews, tests, types of behavioral observations, forms of reporting and conditions of observations are all relevant in the presentation of a scientific report. Simply put—if another expert cannot understand the process by which the information was derived, then the scientific credibility of the report can be more readily challenged. This does not mean that all procedures and techniques must be exactly the same between experts of different disciplines. It does mean that the procedures and activities should be clearly delineated so that, if another expert wanted to, he or she could employ similar methods.

One of the problems with this particular factor is that findings are sometimes timebound. Findings which are timebound might be somewhat different because of the time variable. One problem in scientific replication is that simply by putting subjects through a series of questions, they have had time to develop a "practice effect" and to think them through. This ability to do this may change their responses the second time around. It is extremely important that a scientific report have a number of "check factors" built into the report in order to eliminate the possibility of a whimsical response or a practice effect simply because of time. Also, it is possible for subjects to become aware of the pattern of questioning that experts employ and attempt to change their responses the next time around to "look more socially acceptable." Use of a multimethods (different approaches) to obtain material on the same theme is a check on this problem.

A very good example of the socially acceptable responses occurs in custody evaluations. It is not uncommon for a skilled evaluator to find parents expressing that "I respect the rights of the other parent and feel that the children should certainly have involvement with their other parent." Careful investigation in terms of interviews

with other members of the family, including the children, often reveals that this parent is extremely exclusionary and proprietary in their approach to parenting. Therefore, interview data or information is only one source of information and must be checked and counter-checked by other methods (such as behavioral observations).

Procedures and tests must be explicated—diagnostic interviews, play therapy, psychological testing, psychiatric evaluations (what kind of psychiatric evaluations?) as well as the length of time, all should be delineated. The author recently observed an “expert” testifying on behalf of a mother for custody. When asked “what was the first date that he saw the mother?,” his answer was “I don’t recall.” “How many times did you see the mother?” Answer “I’m not sure.” “Were the times of the mother and the father comparable?” Answer, “about.”

4. *The Amount of Time Involved in Evaluation* — In order to pursue a scientific investigation of behavioral patterns an appropriate amount of time must be allocated to interview the primary and peripheral subjects. Primary subjects would be the children and the parents in a custody case and peripheral subjects might be friends, other relatives and school teachers. The time given to each procedure and subject should be contained in the report and/or should be known by the expert testifying.

5. *One Fact a Case Does Not Make* — A scientific analysis of behavior has to include a consideration of *patterns* or themes. One individual piece of behavior (with the exception of the behavior being extremely severe or dangerous) is not adequate in order to extrapolate to other areas. In other words, if a parent neglected to take a child to the doctor on one particular occasion, and no major problem resulted, should not be used to indicate the nature of parenting, especially if it is in the context of an entire history of appropriate concern and involvement. It is not uncommon to hear experts testifying on the great meaning that one piece of behavior might have for the entire case. Facts clustered around a *theme* (abuse, neglect, social-psychological damage, non-involvement in education, involvement in problematic lifestyles) is the only acceptable approach in terms of drawing opinions or conclusions about human behavior. Even then, an analysis should be made of the factors involved in this cluster of

facts. The facts may cluster in a way that point to the lack of involvement of a mother in the educational activities of her children. However, further investigation may reveal that she had been systematically excluded from such involvement by the father.

6. *Consulting or Supportative Opinions* — The scientific community is fond of talking about collaboration and peer evaluation, in order to confirm or reject certain observations and conclusions. Therefore, the question can be raised about an expert or a report as to whether any additional opinions were sought to confirm or reject the data or conclusions of the expert at hand. Accordingly, asking experts if they have consulted people within their discipline or other disciplines, reveals whether they are *subscribing* to the notion that scientists, whether clinical or research oriented, seek inputs from others.

7. *Relevancy of Material* — A little more subtle, but equally important factor in evaluating the scientific nature of the report is to determine whether the materials gathered or reported upon are relevant to the central question in the case. The central question may include the determination of custody, the abusive qualities of a parent, the nature of character, assault within a given environment, or the like. Whether observations, interviews, or tests apply or are relevant to the central question is exceedingly important.

For example, it is not uncommon, in custody cases, to have psychologists testify on the parenting skills of a particular parent on the basis of certain tests. An analysis of these tests *often* indicates that these tests were not designed to deal with the question of parenting. In other words, experts may make conclusions based on irrelevant materials. Questioning the experts on the intent of the design of their materials will often reveal a faulty connection between the essential question, the use of particular materials and their conclusions.

Certain materials or approaches may be more relevant in one case than in another. In a case where the parenting skills of the father were in question, it was interesting to note that no actual behavioral interaction was observed between parent and child by one of the experts. And yet, the expert was willing to conclude that the father had problematic parenting skills. Another expert came into the court and testified that he had seen the father in interaction with the child over many, many hours in many different

circumstances and that there appeared to be no problem in parenting skills (which included decision-making, social responsibility, task orientations, measurements of physical contact and type of emotional content in his interaction with the child).

Another factor to be considered in regard to relevancy is *recency of contact*. Is the report outdated? This can become a regular problem in court situations which are often postponed or continued. Is a report that is six months old updated? Is testing that was administered twelve months ago relevant to the conditions of today? Have relationships, physical residency, attitudes, values or conflicts from the past been modified since the time the report was written?

Many reports are *padding*. Padding refers to the inclusion of materials that have nothing to do with the case. I recently evaluated a report that included (in the appendix) the nursery school record of a mother who was trying to obtain full custody of a child. The report was forty to fifty pages in length, about fifty to seventy percent of which was with material that might be classified as padding. Any item such as school records of the parent or child must not only be placed in the report but an explanation should be given as to their relevancy or connection to a particular case. Are attendance records from the school included because this is part of a problem of long standing? What meaning does a piece of information have for *this case*?

8. *Source of Referral* — An important question arises concerning the basis of contact with the evaluator or writer of a scientific report. It is also important to determine if the author of the report is also the evaluator. Did the referral for the evaluation come from: (1) An attorney; (2) The courts; (3) A conciliation arm of the court; (4) A particular client or a patient self-referral; (5) A client or patient involved with the evaluator in therapy or counseling prior to the evaluation? It is important to specify this characteristic of the relationship between the evaluator/author and the client(s) or family.

Some of the evaluators and authors of "Scientific reports" take predominately adversarial cases. That is, they represent one party over and against another. Their reports may or may not contain information about the other parent or other views or perspectives of the problem. In this sense, it is a somewhat limited presentation of a social situation. Other authors of scientific

reports only accept cases on the basis of being able to evaluate all relevant parties involved for given periods of time. This latter point refers to experts who will require a minimum of a certain number of hours of interview or observational time. Generally speaking, brief observations are not reliable. Testimony based on one hour of observation or testing compared to twenty hours has obvious weaknesses.

9. *Clarity of the Report* — How specific or clear is the report? If the report appears to be vague, diffuse or obfuscated in style, then its scientific and practical value is limited. One of the major considerations in the clarity of the report has to do with the focus of the report. Is the report concentrating on an educational problem, a residential choice, a mental health evaluation, an assessment of an abuse situation or some other social phenomenon? It is very important that the report specify exactly what it will be dealing with and that it remains consistent with that charge. Once the focus or foci is/are established, the report should specify further the sub-divisions that it will consider. For example, if it is a report that is evaluating the differences between two school districts (in order to assist the court in making a choice between schools that the parents are arguing over), does the report specify the variables or factors that will be pursued in the educational evaluation? These factors can include class size, ratings on national tests, teacher quality (which would assess teacher's educational background and performance), evaluation of extra-curricular activities, where the children go after they graduate and the like. In other words, a report to be scientific must continue to specify the phenomenon under investigation and its subdivisions. It is not scientific to state that school (A) is superior to school (B) in the opinion of the author unless the opinion is based on factors that an independent researcher or evaluator can go out and duplicate.

It is important to discern whether the report is child focused, parent focused, family focused, or has some other focus. Many scientific evaluators and authors have a hidden bias and report the material only from the perspective of one particular type of party. If a "scientist" has only one focus, he or she is probably ignoring certain negative or positive effects or problems that should be included.

Another consideration in studying the focus of a report is to determine if the report is concen-

trating on past, present or future time lines. Some reports have a built in bias by reporting only what happened in the past and then drawing conclusions and recommendations for the future. These kinds of reports give little attention to the present. Other reports may focus only on the present with little understanding of the past or the history and virtually no attention to possible realities in the future. Finally, some reports discuss future potential and opportunities with little connection to past realities and problems.

10. *The Language Usage* — Reports often reveal their bias and unscientific nature or their scientific bias by the kind of language that is used. Obviously, certain experts will use certain kinds of language. Psychologists will discuss matters in psychological jargon, whereas a sociologist will discuss it with a sociological bent. Psychiatrists will often use medical terminology in their discussions. Social workers will often discuss materials from a casework analysis point of view. This is not problematic in itself. However, it must be understood that this is *only one* scientific perspective. A psychological diagnosis should be viewed as *one* diagnosis of a particular situation. A sociologist, social worker, psychiatrist or other mental health professional might evaluate the situation differently. Because of their perspectives or educational background-training and clinical experience professionals might view phenomena differently than other professionals. Credence and acceptance of other perspectives is becoming more and more a part of an inter-disciplinary approach. A sound report of social behavior will have contributions by psychologists, sociologists, social workers and psychiatrists where their expertise is relevant. It is not difficult to challenge the particular evaluations of one expert by presenting an evaluation or language of a different expert. Reports then may be critiqued both by experts within their field as well as experts in allied or related fields. No one field has the market place cornered in terms of providing the best information. At times it is very important to understand the interaction of the parties and the family constellation. People specially trained in family dynamics and in the operation of groups effects on individuals can lend this expertise. Somebody trained in evaluating individuals outside of their social context would not be as effective a scientist in that case. Scientists and their perspectives or disciplinary views

are as useful as their ability to connect their background and training to a particular case. It is incumbent upon the expert to make the connection between their training, views, language and the case.

Another factor in use of language is in determining whether the language is of an adversarial type or neutral scientific language. An example of an adversarial language is:

“The father was immature and silly in his behavior.”

It is important to note that the statement immaturity was not based on any tests of maturity level, but was a value judgment by the evaluator. “Silly” has no scientific reference and as such remains an unexplained term or commentary. A more scientific statement would be:

“The father manifested a number of problems in social judgment. For example, in trying to decide how to reduce the conflict between two fighting siblings, he was not able to provide any suggestions. When asked questions that dealt with his history of involvement with the children, he would punctuate his commentary with laughter. When asked to describe this particular reaction, the father indicated that often when he is nervous he will laugh. (It was noted that as the father became more relaxed in the clinical setting that the laughter diminished and then disappeared).”

The first example of adversarial language leaves the reader with implications, assumptions, and conclusions that are open ended and raises more questions than it does provide information.

Some experts enjoy using serious labels or technical language. One common phrase of some mental health professionals is “pathological indicators.” This term was recently used in a case that I observed. When the expert was pressed to describe scientifically what the pathological indicators were, he had extreme difficulty in relating this to custody battles. The label “pathological indicators” was applied to a father after one hour and fifty minutes of evaluation. The core issue in the case was parenting skills. The expert presenting the report had no behavioral observations of parenting, no observations outside the office and yet was willing to conclude that the father had “pathological indi-

cators." When pressed again for an explanation of the term and its connection to this father and his parenting skills, the expert was diffuse. His presentation was dramatic but scientifically weak.

11. *Reporting Office Behavior and Testing vs. Behavioral Observations Outside of the Office* —It is important to note that a scientific opinion can only be based on the data at hand. Experts draw on information from tests, interviews, behavioral observations, and other reports. Many reports of children do not include behavioral observations of the parents and children, and yet, experts have been free to draw conclusions on the quality of *interaction* concerning parent and child. This is a very problematic conclusion and can readily be challenged. Behavioral observations are limited to the context in which they are observed. It is not necessarily possible to conclude that the behavioral patterns observed in the office are the same as those patterns that might be observed outside of the office.

Contextual analysis means that the expert has some information and/or observations about the behavior in question outside of the professional setting. A mother reported in court, to neighbors and mental health evaluators, that her daughter was "frightened to death" of her father. An "expert" testified that his tests revealed extreme fear of the father. Behavioral observations of child and father (without the mother present) revealed no such fear. When the mother came to pick the child up, the child demonstrated withdrawal and fear of the father; an evaluator was present to observe this transition.

12. *Self-Critical* —To be scientific a report should be self-critical. It should evaluate its own limitations and make suggestions for further research and investigation. A scientific report which is overly definitive can be challenged. If the researcher, evaluator or author has spent

fifty, one hundred, two hundred, two-hundred-fifty hours in a particular case, their conclusions can be more definitive assuming that the proper procedures and records were kept. The less comprehensive, the less exact, and time consuming an evaluation has been, the less definitive the conclusions should be.

There are some notable exceptions to this when extreme abuse, harassment or other physical, social-psychological, or educational damages have already resulted and could obviously continue to result if the circumstances remained the same.

13. *Conclusions* —For a report to be scientific, the conclusions must be based on the material contained within the report. Conclusions and recommendations must not come from "left field." In other words, it is not scientifically appropriate to (conclude or recommend) that a custodial shift should be made from the mother's to the father's residence because the child is experiencing pressure and manipulative behavior by the mother *unless* the report demonstrates the kind of manipulative behavior/pressures and problems that the child is experiencing.

Conclusions based on testing, observation, review of written documents, interactional analysis of the parties, and other approaches must be made very clear. Reports sometimes confuse conclusions and recommendations.

A recommendation flows from the conclusions which, in turn, are based on the body of the material contained within the report. A recommendation that a child participate in a joint custody arrangement because "it's in his best interest" is too vague. The "best interests" must be defined as it relates to the particular case.

Social scientific conclusions always have a degree of tentativeness to them given the limitations and exactness of social and behavioral sciences. Does the report fairly reflect these limitations?