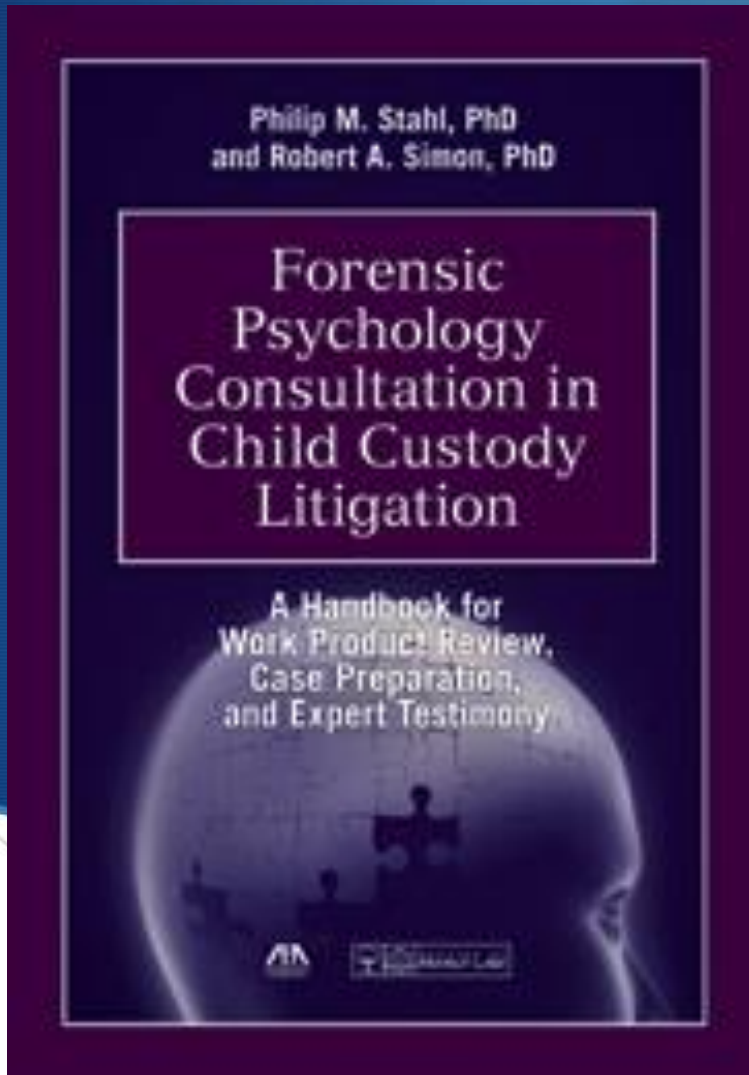


Family Reports: Best Practices & Critique



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Family Law
Practitioners
Association



Let's Go Back a Step

- ◆ Why do we do Family Reports?
- ◆ Who is our audience?
- ◆ Forensic vs. Clinical work?
- ◆ AFCC Model Standards
- ◆ Specialty Guidelines for Forensic Psychologists
- ◆ Ethical Principles and Code of Conduct for Psychologists, 2010

What are we Evaluating?

- ◆ Best Interests of the Child
- ◆ Family' s Relationships
- ◆ Child' s Functioning and Needs
- ◆ Parental Capacities Strengths / Weaknesses (Vertical)
- ◆ Co-Parenting Relationship (Horizontal)

- ◆ Relevant Factors
- ◆ Special Issues or Allegations
 - ◆ Domestic Violence
 - ◆ Relocation
 - ◆ Alienation
 - ◆ Mental Illness
 - ◆ Drugs/Alcohol
- ◆ Support for the Child's Relationship with the Other Parent
- ◆ Logistical Issues (Transportation/Distance/Work Schedules/School Schedules)

Why Appoint a Neutral Expert?

- ◆ Aid to judicial fact-finding:
 - ◆ Holistic, neutral overview of family functioning
 - ◆ Make advisory recommendations the the Court
 - ◆ Reaction to excesses and suspicion of party paid experts
- ◆ Promote settlement:
 - ◆ Parents can accept report writer' s views
 - ◆ Provide support for lawyers advice
 - ◆ Potential preview of judicial ruling

Who is an “Expert”?

- ◆ Qualified by “knowledge, skill, experience, training or education”
- ◆ Expert has specialized knowledge within their broader field
- ◆ Greater knowledge than lay person makes opinions “useful” to fact finder
- ◆ Weight of expert opinion is up to finder of fact

Criteria for Expert Opinions

- ◆ Must assist the court to understand the evidence or to determine a fact in issue
 - ◆ The job of the expert is to assist the trier of fact
- ◆ May be in the form of an opinion and must be based on:
 1. Sufficient facts or data
 2. The product and application of reliable principles and methods
 3. The principles and methods are applied reliably to the facts of the case
 4. The expert's opinion is the result of multi-method and multi-modal investigation.
 5. The expert's stance is neutral, non-aligned and non-invested in case outcome

Basic Ground Rules

Neutral Expert

- ◆ Appointed on court's own motion or parties
- ◆ With appointed experts, parties can agree, or court can designate
- ◆ Expert must consent/accept appointment
- ◆ Expert must be informed of duties in writing in conformity with legal codes and rules
- ◆ Expert must advise parties of findings before trial
 - ◆ Can be written or verbal
- ◆ Expert may be called to testify by court or either party
- ◆ Expert is subject to cross examination by either party, including one calling witness
- ◆ Parties can still call own retained experts to rebut appointed expert

Expert Can Rely on Experience

- ◆ Expert testimony is grounded in science, empiricism whenever possible
- ◆ Can be based on experience but expert must explain:
 - ◆ how experience leads to conclusion
 - ◆ why experience is a sufficient basis for the opinion
 - ◆ How experience is reliably applied to the facts
 - ◆ What the experience is
 - ◆ Limitations of the experience

Good report writer Traits

(with thanks to Boy Scout Oath)

💧 **TRUSTWORTHY**

- 💧 report writers must be trustworthy, telling the truth, the whole truth and nothing but the truth

💧 **LOYAL**

- 💧 report writers must be loyal to the process and the needs of the court

💧 **HELPFUL**

- 💧 This can be a risk for report writers, if being helpful leads to a crossing of one's role

Good report writer Traits

◆ **FRIENDLY / COURTEOUS / KIND**

- ◆ report writers need to be courteous, provide informed consent to parents, and discuss limits of confidentiality with parents, children, and collateral witnesses

◆ **OBEDIENT**

- ◆ report writers need to be obedient to Court rules, Practice Standards and Guidelines, Professional Ethics Codes.

Good report writer Traits

💧 **BRAVE**

- 💧 report writers need to bravely tell the truth, good or bad, about parents and their strengths and weaknesses as parents

💧 **CLEAN**

- 💧 report writers must be aware of biases and work to avoid interference by them, especially if we don't like a particular parent

💧 **REVERENT**

- 💧 report writers have respect for parents, attorneys, and the court system

Good report writer Traits

◆ **BE PREPARED**

- ◆ report writers must be prepared with the proper mind-set, which includes:
 - ◆ A healthy skepticism
 - ◆ A search for various truths within family
 - ◆ Development of multiple hypotheses
 - ◆ Investigative attitude, seeking more details and leaving no stone unturned
 - ◆ Disconfirmation, rather than confirmation of what we want to believe
 - ◆ A recognition of factors that contribute to suggestibility of children
 - ◆ Willingness to be transparent, open

Good Evaluation Model

- ◆ **A typical thorough evaluation includes:**
 - ◆ Appropriate informed consent
 - ◆ Use of a form to gather data; this keeps to a more structured approach
 - ◆ Several interviews with each parent
 - ◆ Interviews with older children
 - ◆ Observations of all children with parents
 - ◆ Review of collateral material
 - ◆ Contact with relevant collateral sources
- ◆ **Additional Potential Procedures**
 - ◆ Psychological tests or Parenting questionnaires
 - ◆ Child-related questionnaires
 - ◆ Home visits

Bad Evaluation Model

- ◆ Not enough interviews
- ◆ Lack of collateral data
- ◆ Lack of reference to empirical literature
- ◆ Not knowing enough law
- ◆ Lack of appropriate skepticism
- ◆ Being a scribe, not an investigator
- ◆ If psychological tests are administered, only using one test or using test results to formulate conclusions rather than generate hypotheses

Ugly Evaluation Model

- ◆ Choosing not to see some children
- ◆ Relying too heavily on any particular data points, including:
 - ◆ Children's play
 - ◆ Psychological test data
 - ◆ Overly focusing on parents' disputes and minimizing children's issues
 - ◆ Sample of 1
 - ◆ Offering opinions with no basis

Ugly Side of Evaluations

- ◆ report writers who, while trained, still have no idea how to perform evaluations and do very poor job; rely on diagnosis (PAS), do terrible report
- ◆ Those who critique evaluations negatively with no basis or who engage in dual roles with clients
- ◆ Judges who accept report writer recommendations when based on poor protocol, use of non-valid instruments, bias, and/or extremely poor analysis
- ◆ Parents and attorneys who file frivolous allegations and licensing complaints against report writer
- ◆ Litigants and others who use websites and email to besmirch reputation of good judges, children's lawyers counsel and report writers

AFCC Model Standards

www.afccnet.org

- ◆ Training, Education, & Competency Standards
 - ◆ Specialized Knowledge and Training
 - ◆ Minimum of Master's Degree in mental health field
 - ◆ Many areas of basic training and specialized training
 - ◆ Those with fewer than two years experience encouraged to seek ongoing supervision

AFCC Model Standards

◆ Knowledge of Law

- ◆ report writers should be familiar with applicable statutes, case law, and local rules
- ◆ report writers shall have fundamental level of knowledge and understanding of legal and professional standards, laws, and rules governing their participation as experts

AFCC Model Standards

- ◆ Record Keeping and Release of Information
 - ◆ Records refer to everything in the report writer's files
 - ◆ report writers need to establish and maintain a record-keeping system
 - ◆ report writers need to maintain active control over records and take reasonable care to prevent loss or destruction of records
 - ◆ report writers shall establish procedures for release of information

AFCC Model Standards

- ◆ Communication with Litigants, Attorneys, & Courts
 - ◆ report writers shall provide each parent with written information re: policies, procedures, and fees
 - ◆ report writers shall review those fees verbally prior to commencing evaluation
 - ◆ report writers shall inform collateral sources about the potential uses of their information
 - ◆ report writers avoid ex-parte communication with the court or attorneys for one side
 - ◆ report writers refrain from making interim recommendations
 - ◆ report writers strive to be accurate, objective, and fair and are encouraged to use peer-reviewed research in reports

AFCC Model Standards

◆ Data Gathering

- ◆ Scope of evaluation shall be in the order
- ◆ report writers shall assess factors and variables pertinent to evaluation. These shall be determined by statute, case law, referring questions or research.
- ◆ report writers shall use multiple methods to increase accuracy and objectivity
- ◆ report writers shall use a balanced process
- ◆ report writers shall use empirically based methods and procedures

AFCC Model Standards

◆ Data Gathering

- ◆ report writers shall strive to assess each parent and all adults who perform a caretaking role and/or live with the child
- ◆ report writers shall individually assess each child
- ◆ report writers shall assess relationship between each child and all adults
- ◆ report writers shall conduct at least one in-person interview with parents. Telephonic interviews acceptable for collaterals

AFCC Model Standards

- ◆ Use of Formal Assessment Instruments
 - ◆ Only report writers trained in administration and interpretation of FAI shall conduct testing
 - ◆ When employed, report writers shall be prepared to articulate the basis for selection
 - ◆ FAI' s shall only be used for purposes validated and according to instructions
 - ◆ report writers shall take note of prior assessments
 - ◆ Caution shall be exercised when using computer-generated interpretive reports

AFCC Model Standards

- ◆ Role Conflict and Dual Role Issues
 - ◆ report writers shall strive for objectivity and take reasonable steps to avoid multiple relationships
 - ◆ report writers shall disclose all prior relationships
 - ◆ When avoiding multiple relationships is unavoidable, report writers have the affirmative duty to inform referring agents of the disadvantages of multiple roles
 - ◆ report writers avoid offering advice or therapeutic interventions
 - ◆ Practitioners hired to review the work of an report writer shall restrict their role to that of a reviewer and shall avoid relationships with the participants

AFCC Model Standards

◆ Interviewing Children

- ◆ report writers shall be trained and skilled in interviewing children
- ◆ report writers shall have knowledge of and shall consider factors that strongly affect children's capacities as witnesses
- ◆ report writers shall commence interviews with children by informing them that what they tell the report writer is not confidential

AFCC Model Standards

- **Observational-Interactional Assessment**
 - report writers shall be mindful that their presence in the observation may influence the behaviors and interactions they are endeavoring to observe
 - Each parent child combination shall be observed directly by the report writer unless there is risk to child's safety
 - report writers shall inform parents of the purpose of the observations and they shall be scheduled and overt
 - Detailed recording shall be made. If neither audio- or video-taped, notes must be taken asap following session

AFCC Model Standards

- ◆ Use of Collateral Source Information
 - ◆ Valid collateral source information is critical
 - ◆ Data sources may include oral or written reports from a variety of sources, including:
 - ◆ School Medical Mental health
 - ◆ Employment Law Enforcement
 - ◆ Social Service
 - ◆ report writers shall be aware of local rules re: hearsay
 - ◆ All collateral sources shall be disclosed

AFCC Model Standards

💧 Presentation and Interpretation of Data

- 💧 report writers shall only offer opinions in those areas in which they are competent
- 💧 Opinions expressed by report writers shall be based on information and data obtained through application of reliable methods.
- 💧 report writers shall differentiate among information gathered, observations made, data collected, inferences made, and opinions formulated.
- 💧 report writers shall only provide information about personality characteristics of those personally evaluated
- 💧 When appropriate, report writers articulate limits to evaluation

APA Guidelines

- ◆ The purpose of the evaluation is to assist in determining the psychological best interests of the child.
- ◆ The child's welfare is paramount.
- ◆ The evaluation focuses upon parenting attributes, the child's psychological needs, and the resulting fit.
- ◆ Report Writers strive to gain and maintain specialized competence.
- ◆ Report Writers strive to function as impartial report writers.

APA Guidelines

- ◆ Report Writers strive to engage in culturally informed, nondiscriminatory evaluation practices.
- ◆ Report Writers strive to avoid conflicts of interest and multiple relationships in conducting evaluations.
- ◆ Report Writers strive to establish the scope of the evaluation in a timely fashion, consistent with the nature of the referral question.
- ◆ Report Writers strive to obtain appropriately informed consent.

APA Guidelines

- ◆ Report Writers strive to employ multiple methods of data gathering.
- ◆ Report Writers strive to interpret assessment data in a manner consistent with the context of the evaluation.
- ◆ Report Writers strive to complement the evaluation with the appropriate combination of examinations.
- ◆ Report Writers strive to base their recommendations, if any, upon the psychological best interests of the child.
- ◆ Report Writers create and maintain professional records in accordance with ethical and legal obligations.

Be Aware Of and Control For Bias

- ◆ The ethical and professional report writer forensic engages in ongoing efforts to recognize his/her own biases so as to assure that these biases are not operating and influencing conclusions and testimony. The ethical and professional report writer has processes in place, such as multiple hypothesis testing, that help control for bias and help assure accurate conclusions and opinions.

Know Relevant Law

- ◆ Report Writers are or become reasonably familiar with the judicial or administrative rules governing their roles.
- ◆ In addition to engaging in ongoing psychological training and maintaining state-of-the-art psychological competence, forensic consultants must commit themselves to learning relevant law and to maintaining ongoing psycho-legal education.

Beware of Computerized Test Interpretations

- ◆ Be cautious with the used of CGTI.
- ◆ Does the report writer know the interpretive algorithm?
- ◆ Is the report writer competent in actually interpreting the test?
- ◆ What are the limitations of the use of the CGTI when the computer doesn't know the context of the case?
- ◆ In the case of “custody” interpretations, what do you know about custody “norms”?

Clearly Detail Financial Arrangements

- ◆ Given their emotional vulnerability, child custody litigants are more easily exploited financially than other individuals may be. When parents believe that the well-being of their children is at stake, they are often willing to do things and take on expenses they might otherwise avoid.
- ◆ The ethically report writer clearly describes and documents, in writing, the financial and fee arrangements attendant to involvement in the case so as to create reasonable and accurate expectations on the part of the client.
- ◆ Specification of fee arrangements also includes a discussion of how the report writers are not being paid for their particular opinion or their point of view but, instead, is being paid for their work and the proffering of the accurate and honest professional opinion.

Critiquing the Family Report: Being An Informed Consumer



What Is A Family Report?

A Family Report report is a complex written PSYCHOLEGAL work product that reflects the presentation of psychological data in concert with prevailing, guiding or required legal elements.

Elements of a Quality Family Report and Assessing the Forensic Report

- ◆ **Overview: Key Components of a Well-Done Family Report**
 - ◆ Adequate informed consent (assent) with each parent, with children, and with all collateral witnesses
 - ◆ Several interviews with each parent that addresses all critical issues in depth
 - ◆ Multiple interviews with each child, conducted at an age-appropriate level, to understand all critical issues in depth
 - ◆ Observations of parents and children together
 - ◆ Collateral review of information provided by parents and / or their attorneys
 - ◆ Collateral contacts, with relevant collateral resources
 - ◆ A comprehensive and well organized report

Report Organization

- ◆ Mother, Father, Children, Testing, Collaterals, Analysis, Recommendations (typical, not optimal)
- ◆ Organized by critical issue
- ◆ Organized by best interest factors

Other Critical Issues

- ◆ Look for, amongst other things:
 - ◆ Balanced Procedures
 - ◆ Thorough and legible note-taking and the complete keeping of the record.
 - ◆ That the report writer understood his task as being a forensic task and that he appreciated the difference between clinical psychology and forensic psychology.
 - ◆ Fairness, i.e., giving each parent sufficient time to present their important information and balancing that with a need to complete the process in a timely way
 - ◆ Neutrality and objectivity in process and language
 - ◆ Recognition that the report writer had sufficient training and experience to conduct the particular evaluation and utilized that training and experience in the performance of this particular evaluation
 - ◆ Nexus between data gathered and recommendations made
 - ◆ Reference to and use of empirical literature

Approaching the Critique – Initial Process

- ◆ Was there adequate informed consent?
- ◆ Did the report writer use a form to gather initial family data?
- ◆ Was there any evidence of dual role?
- ◆ Did the report writer behave therapeutically or make interim recommendations without a judicial request or stipulation of the parties?
- ◆ Did the report writer behave “neutrally” throughout the process?

Approaching the Critique

- ◆ Is the report writer qualified?
 - ◆ Look to qualifications as outlined in AFCC Model Standards
- ◆ Was the evaluation thorough?
 - ◆ Look to APA Guidelines
 - ◆ Look to procedures and Specialty Guidelines
 - ◆ Was the report writer balanced in procedures and data collection?
 - ◆ Did the report writer compare data drawn from the interviews with data received from other sources, such as psychological testing, collateral sources, and family observations?

Approaching the Critique – Interviews

- ◆ Was there a semi-formal or structured interview process?
- ◆ Were relevant questions asked of each parent?
- ◆ Was domestic violence explored?
- ◆ When a parent raised important issues, was the other parent asked questions about those issues?
- ◆ Was each parent given a chance to respond to allegations made by the other parent?
- ◆ Were questions asked which encouraged a parent to be specific in allegations?
- ◆ Ultimately, does the evidence show that the report writer was more than a stenographer?

Approaching the Critique – Psychological Testing

- ◆ Were tests administered and scored appropriately?
- ◆ Were tests given which were relevant to the particular questions being asked?
- ◆ Did the report writer give the same tests / parenting questionnaires to each parent?
- ◆ Were tests that were chosen adequately normed and have clear and understandable reliability and validity
- ◆ Were tests used to determine outcome or generate hypotheses?
- ◆ Was test data adequately compared with other data?

Approaching the Critique – Collateral Record Review

- ◆ Did the report writer ask that all material received from parents and/or attorneys was given to the other side?
- ◆ Did the report writer review all material offered?
- ◆ Did the report writer ask each parent to suggest names for collateral calls?
- ◆ Did the report writer call relevant collaterals who would have a range of relevant information?

Approaching the Critique – Observational Data

- ◆ Was a home visit performed?
- ◆ Were observations structured or semi-structured?
- ◆ Were adequate notes taken of the observations?
- ◆ Was there evidence that observational data was integrated with other data?

Approaching the Critique – Relevance

- ◆ Were the main problems and / or allegations addressed or ignored?
- ◆ Did the report writer consider rival plausible alternative hypotheses?
- ◆ Did the report writer understand the relevance to the legal questions (see more about relocation cases)?
- ◆ Did the report writer explain the data in a user-friendly manner, both for the judge and for the family

Approaching the Critique – Analysis

- ◆ Did the report writer prepare alternative recommendations when relevant
- ◆ Did the report writer consider all of the relevant allegations and/or issues raised during the evaluation
- ◆ Did the report writer consider major issues that should be part of every evaluation?

Other Critical Issues

- ◆ The custody report writer will want to ensure, among other things:
 - ◆ Balanced Procedures
 - ◆ Thorough and legible note-taking and the complete keeping of the record.
 - ◆ That the report writer understood his task as being a forensic task and that he appreciated the difference between clinical psychology and forensic psychology.
 - ◆ Fairness, i.e., giving each parent sufficient time to present their important information and balancing that with a need to complete the process in a timely way
 - ◆ Neutrality and objectivity
 - ◆ Recognition that the report writer had sufficient training and experience to conduct the particular evaluation and utilized that training and experience in the performance of this particular evaluation

Necessary Report Components

- ◆ Sufficient identifying information
- ◆ Sufficient historical information
- ◆ Relevant background information
- ◆ Interview data
- ◆ Observation data
- ◆ Child data
- ◆ Analysis, not summary
- ◆ Recommendations when possible

Report and Its Components

- ◆ Procedures (include the amount of time spent in each procedure)
- ◆ If testing is used, include a statement of how the test data is utilized in formulating the overall opinions and conclusions
- ◆ Is there a discussion of the strengths and weaknesses of each parent?
- ◆ If there a discussion of the co-parenting relationship?
- ◆ Is there a discussion of how the parents view each other?
- ◆ Is there a discussion of each child, including observations with parents, relevant developmental information, psychological functioning (including self esteem and competence issues) and other relevant information (e.g., friends, activities, interests, school etc.)
- ◆ Is there a balanced analysis?

The Evaluation Report

- ◆ Case Name and Dates of Evaluation
- ◆ Evaluation Procedures
 - ◆ All Interview Dates & Who Was Seen. Be Specific about Individual and/or Conjoint Interviews
 - ◆ List of Materials Reviewed. Be Specific if There are Important Items (e.g., a Letter from DSS re: Abuse)
 - ◆ List of Collateral Sources Who report writer has Talked With
 - ◆ List of Any Psychological Tests or Parenting Inventories, and Who they were Administered to
 - ◆ Describe any other Procedures Unique to the Particular Evaluation

The Evaluation Report

- ◆ Relevant History & Background Information
 - ◆ Unless It's Necessary to Include Material Not Pertinent, Try and Stay Focused on the Marital And/or Divorce Issue
 - ◆ Describe the Nature of the Dispute and Its Relevance to the Evaluation
 - ◆ Describe How Each Parent Views the Problems and Suggested Solutions

The Evaluation Report

- ◆ Does the report....
 - ◆ Describe How Each Parent Views the Problems, Including Perception of Self and Other Parent
 - ◆ Describe Each Parent's Ability to Recognize His/her Own Role in the Problems
 - ◆ Describe Each Parent's Relevant History
 - ◆ Describe Each Parent's Perception of Child's Functioning and Needs
 - ◆ Describe Each Parent's Clinical Functioning Related to Issues in Evaluation

The Evaluation Report

- ◆ With Regard to Children
 - ◆ Observations of Each Child W/ Each Parent
 - ◆ If There Are Siblings, Describe Relationships Between the Siblings
 - ◆ Each Child's Emotional and Social Functioning
 - ◆ Child's Fears, Thoughts, Feelings, and Wishes, to Extent Relevant
 - ◆ Describe the Child's Developmental Functioning, Focusing Especially on Areas of Normal Functioning and Areas of Difficulty (Judges Really like This)

Definition of Analysis *

Analysis is the process of breaking a complex topic, concept or construct into smaller component parts for the purpose of gaining a better understanding of the complex topic, concept or construct.

The Evaluation Report

- ◆ Summary, Analysis, and Recommendations
 - ◆ Describe Your Own Perception of the Problems, and the Extent to Which Each Parent Contributes to the Problems
 - ◆ When There Is a Specific Question, Such as Relocation, Describe the Various Alternatives Available to the Court, and Pros and Cons of Each

Why Is Analysis Important?

Takes the report writer through a systematic review and appraisal of all of the data

Helps control for various types of bias

Recognizes the complexity of the task and of the concepts involved

Formulating Analysis

- ◆ Put thinking on paper. Give reasons for your opinions! **SHOW YOUR WORK.**
- ◆ Few cases are black / white; give court your analysis of:
 - ◆ Key issues, such as domestic violence allegations, substance abuse issues, good/bad parenting, etc.
 - ◆ Advantages / Disadvantages of mother-custody, father-custody, shared-custody
- ◆ Always connect your analysis to the data you have presented

Components of Analysis

Using as an example a case of relocation:

For example, let us assume that mother wishes to relocate and take the children with her

The report writer makes recommendations regarding whether the child(ren) should relocate with the relocating parent.

Assume that the report writer recommends that the children relocate with the mother



BUT

The aware report writer recognizes that the Court may or may not follow the recommendations

THEREFORE

The aware report writer offers alternate sets of
recommendations

AND

The astute report writer describes the limitations of
the data

Including data that is missing

Main Recommendation:

The children should relocate with their mother

Parenting plan for this scenario is offered

Alternative Recommendations:

If the court rules that the children shall remain *and* mother moves

Parenting plan for this scenario is offered

It turns out that mother does not move – or – father relocates to where mother is

Parenting plan for this scenario is offered

This Is Just The Beginning

- ◆ The report writer lists and discusses the benefits of the children relocating
- ◆ The report writer lists and discusses the risks of the children relocation
- ◆ The report writer lists and discusses the benefits of the children not relocating
- ◆ The report writer lists and discusses the risks of the children not relocating

- ◆ The report writer lists and discusses the benefits of primary mother custody
- ◆ The report writer lists and discusses the risks of primary mother custody
- ◆ The report writer lists and discusses the benefits of primary father custody
- ◆ The report writer lists and discusses risks of primary father custody

- ◆ The report writer lists and discusses the benefits of joint residential custody and various custodial options within that scenario
- ◆ The report writer lists and discusses the risks of those joint residential custody options
- ◆ The report writer lists and discusses the benefits of joint decision-making
- ◆ The report writer lists and discusses the risks of joint decision-making

- ◆ The report writer discusses data that supports their conclusions
- ◆ The report writer discusses the data that does not support their conclusions
- ◆ The report writer describes limitations of the report that results from unobtainable data or failure of a party to cooperate or the circumstances of particular interviews

Bias



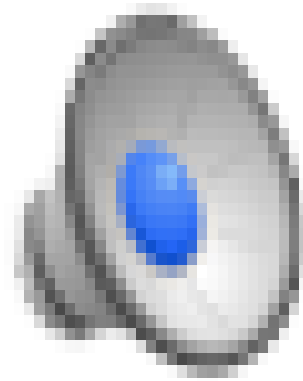


“Do you swear to tell the truth, the whole truth, and nothing but the truth, and not in some sneaky relativistic way?”

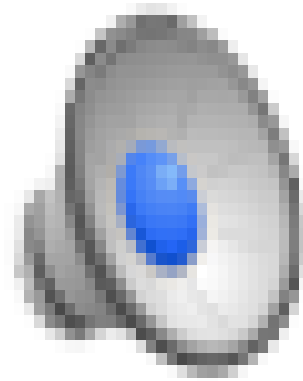
What Is Bias

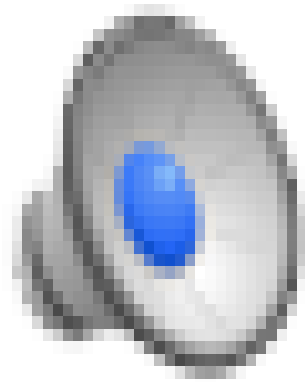
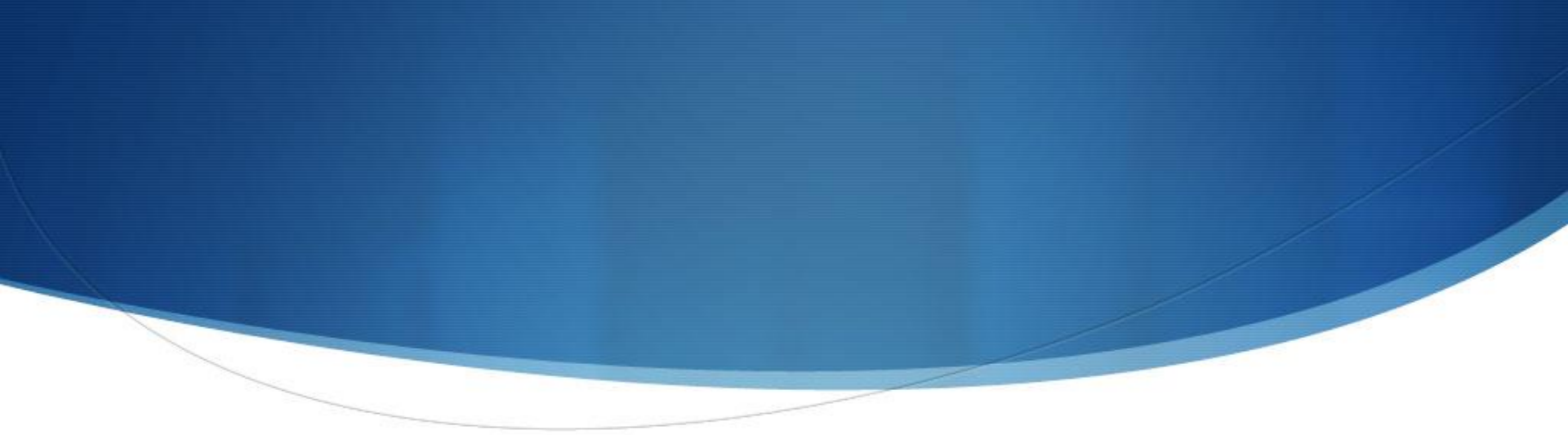
- ◆ Bias is any factor that keeps us from perceiving accurately.
- ◆ Synonyms for bias:
 - ◆ favor, nonobjectivity, one-sidedness, partiality, parti pris, partisanship, ply, prejudice, tendentiousness

The Invisible Gorilla



Optical Illusions





Why is Bias Critical in CCE?

- ◆ Bias is perhaps the greatest threat to the usefulness of forensic work.
- ◆ Bias threatens the probative utility of forensic work products
- ◆ Bias threatens the forensic integrity of work products
- ◆ Bias, when present, compromises the reliability and validity of forensic work products

Different Types of Bias

- ◆ Research Bias
 - ◆ Citing research on one side of an issue – the side that supports your point of view
- ◆ Personal Prejudices
 - ◆ Ethnic, racial, religious, gender
- ◆ Personal Beliefs
 - ◆ Children under age 2 belong with their mothers
 - ◆ Relocation is always bad for children
 - ◆ Fathers who work during the marriage have trouble taking on primary parenting after divorce
 - ◆ Children don't lie – if they say they were abused, they were abused
- ◆ Wanting to Please A Referral Source
- ◆ Playing Into Perceptions of the Judicial Officer's Preferences
- ◆ Avoiding Being Stereotyped
 - ◆ “I am not an report writer who favors mothers even though that is my reputation”

Heuristics and Cognitive Bias

◆ What is a Heuristic?

- ◆ “Simple, efficient rules that describe how people make decisions or reach conclusions when faced with complex problems.”
- ◆ Kahneman points out that the use of heuristics create shortcuts in logic and reasoning. People use heuristics that are overly simple because of the complexity of problems. (Thinking Fast and Slow)
 - ◆ Heuristics can lead us to focus on one aspect of a problem
 - ◆ Heuristics can lead us to ignore some of the information in front of us
 - ◆ Heuristics can lead us to emphasize some factors and minimize others

The use of heuristics often goes unrecognized
by report writers!

◆ Anchoring Heuristic

- ◆ report writer anchors on an aspect of a minority of aspects of a case at the expense of other information
 - ◆ For example, an incident of IPV
 - ◆ For example, an episode of drunkenness by a parent
 - ◆ For example, a psychiatric diagnosis
 - ◆ The Primacy Effect (the data gathered first is given undue emphasis)

◆ Availability Heuristic

- ◆ The tendency to focus on what is most availability in memory
 - ◆ Data that is repeated frequently during the evaluation
 - ◆ Data that is emotionally salient
 - ◆ Data that the report writer “remembers” without going to the file and doing a thorough review of all of the data
 - ◆ Data that is familiar to the report writer – perhaps similar to issues in the report writer’ s life or experience

◆ Confirmatory Bias

- ◆ Conclusions are reached prematurely – subsequent data and information are viewed for how they support the prematurely formed impression
- ◆ Particularly common/uncommonly toxic

Hindsight Bias

“I Knew It All Along”

- ◆ The tendency to overestimate our own ability to have predicted or foreseen an event after learning the outcome
 - ◆ In CCE, this may present itself as a report writer making predictions about a current case based on a previous case whose outcome is known
 - ◆ “I had a case last year just like this”
 - ◆ Data that supports conclusions in the previous case is remembered and applied to the current case. Data that does not support the conclusion is thus forgotten.

Recency Bias

- ◆ Recent information is given disproportionate weight
 - ◆ A complex case, the report writer is highly ambivalent, an event near or at the conclusion of the case tips the balance
 - ◆ For example, DV v. Alienation

Clinical/Professional Stereotyping

- ◆ Belief in diagnostic labels
 - ◆ Litigant carries a psychiatric diagnosis and this overly impacts the view of the litigant as a parent
- ◆ Characteristics over investigation
 - ◆ A litigant presents in a very emotional and dramatic fashion. This leads report writer to underappreciate the claims made by the litigant

Affiliative/Disaffiliative Bias

- ◆ report writer influenced by aspects of litigant that are like or unlike the report writer
 - ◆ Litigant is a passionate surfer. report writer also loves to surf because it gives him a sense of calm and serenity. He assumes that litigant gains the same benefit.
 - ◆ Litigant is a gun owner. report writer believes that guns are unwise and would never own one. Attributes an aggressive point of view to litigant.

Research Bias

- ◆ The use of research to support a preconceived opinion
 - ◆ “Research suggests” without citations
 - ◆ The use of research over weighting the specific and unique factors in a given case (for example, very young child whose parents live several hours apart)
 - ◆ Using research that supports the ongoing involvement in children’s lives to recommend against relocation despite what the law says
 - ◆ Primary parent theory
 - ◆ Citing research on one side of a controversy to the exclusion of the other side of the issue

The Truth Lies Somewhere In The Middle

- ◆ A bias that leads report writers to conclude that the truth of the matter is somewhere between the positions of each litigant
- ◆ A priori belief that both parents have equal contribution to the conflict (as opposed to each probably but not certainly having some contribution)
 - ◆ Instead of a careful/methodical investigation of the contribution of each parent and how their contributions interact into the overall dynamic
 - ◆ Those at risk for burnout are particularly vulnerable to this bias

Atilla The Hun Doesn't Marry Mother Theresa

- ◆ A psychologically healthy parent is not likely to marry a parent with significant psychological compromise
- ◆ In fact, even in cases where both have significant compromise, one person's compromise may impact parenting to a greater or lesser degree than the other parent

Data Gathering Bias

- ◆ An report writer believes more in one type of data than another
 - ◆ Preference for psychological testing versus in-depth investigative interviews
 - ◆ Preference for what is observed during parent-child interaction versus what is learned in interview and from collateral data

How to Control for Bias

- ◆ AWARENESS!!!
- ◆ Gather data in a systematic way
- ◆ Work in a multi-method, multi-factorial, structured way
- ◆ Be sure to look for and notice the strengths and weaknesses of each parent overall
- ◆ Be sure to look for the strengths and weaknesses of each parent when it comes to parenting
- ◆ Understand each parent's view of the other parent – their perceived strengths and weaknesses

How to Control for Bias

- ◆ Remain curious and open
- ◆ Ask probing/investigative questions
- ◆ Consider the risks and benefits of various outcomes
- ◆ Consideration of the limitations of the process and what data may be missing
- ◆ Make generous use of hypothesis testing
 - ◆ Search for data that might confirm as well as disconfirm hypotheses
- ◆ Be humble

Thank You!