

# The Forensic Evaluation and Report: an Agenda for Research

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The written report is a central component of forensic psychiatric practice. In the report, an evaluator assembles and organizes data, interprets results of an evaluation, and offers an opinion in response to legal questions. The past 30 years have seen substantial development in principles and practice of forensic report writing. Drawing on recent advances in the psychiatric report, the authors explore topics including narrative, forensic ethics, coercion within the justice system, and implications of limitations on data in forming forensic opinions. They offer an analysis of unanswered questions in these areas, suggesting opportunities for further empirical study and theoretical development. This proposed agenda is important in training, in the development of policy, and in establishing professional guidelines.

**J Am Acad Psychiatry Law 41:359–65, 2013**

The written report is a focal point for many of the skills of forensic psychiatric practice. It requires that the author assemble and organize background material, conduct a psychiatric evaluation, interpret the results of that evaluation, and relate his findings to the questions that are being asked, usually by an attorney. It requires an understanding of the needs of the audience and the ability to convey conclusions derived from medical data in language that a non-medical audience can understand. It also requires an awareness of the range of ethics-related tensions that arise when clinical skills are used to nonclinical ends. It is the most tangible and visible measure of the professionalism of a forensic psychiatrist.<sup>1</sup>

The principles and practice of psychiatric report writing have seen substantial development over the past 30 years. Some of that development has been empirical, describing the content of psychiatric reports in a range of settings. Research has measured, for instance, the frequency with which psychiatric

recommendations are followed by courts. Other developments have been theoretical. These include analyses of the psychiatric narrative and of the application of the principles of forensic psychiatric ethics to report writing. In this article, we examine what has been achieved and seek to identify those areas where further research will be of greatest value.

## Areas of Development

### The Narrative

The forensic psychiatric report usually begins with scene-setting (often labeled an introduction) and a description of the evaluation on which the report is based. It proceeds to an account of the material under discussion, usually including background information and interview findings, and ends with a conclusion.<sup>2</sup> The details vary with the type of report, and writers have their own preferences. One variation provides separate sections for information obtained from collateral sources. Another variation previews the report's conclusions at the start. The narrative component of the report has a similarly established structure. It follows a linear and chronological course.<sup>3,4</sup>

This traditional approach has been challenged recently by the advocacy of multiple narratives within the body of the report. Each of these multiple narratives is intended to be true to the viewpoint of the one or more people who provided the information. Some may be witnesses to what happened, whereas others

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Disclosures of financial or other potential conflicts of interest: None.

may have described the personality or past behavior of the person being evaluated. The process requires the separation of the “expository” (Ref. 5, p 70) narrative accounts provided by witnesses and others from a conclusory narrative developed by the author.<sup>6,7</sup>

Central to this alternative to the traditional structure is that the “voice” (Ref. 8, p 95) of the person providing the information remain present in the report. Achieving this presence can mean describing the moral judgments that witnesses sometimes offer concerning what they have seen. Incorporating the voices of people who have contributed information provides the reader with a context in which to interpret that information. Emotions such as guilt, resentment, and jealousy may be evident in the voice and can aid in the interpretation of what has been said.

In the traditional approach the reader relies on the author of the report to take into account these considerations in filtering the different accounts and generating a coherent whole. Inevitably, this process requires the author to evaluate the accounts of the different collateral sources. Where the accounts differ in unimportant respects or where one is obviously less reliable, most authors use the version that they regard as most likely to be correct. Sometimes this version is accompanied by a caveat noting that the data are inconsistent.

Where they differ in relation to important information, however, and where it is unclear which version is true, a writer may have to present the different versions and sometimes alternative conclusions based on each. In a malpractice suit, for example, the conclusion of a psychiatric report addressing whether the psychiatrist met the necessary standard of care may be different according to whether the statement of a suicide victim’s wife (e.g., that she told the psychiatrist of her husband’s plans) is believed. One advantage of including both accounts is that it reduces the role of unconscious bias on the part of the assessor. Advocates of providing multiple narratives with voice add the justification that including multiple explanations is more respectful of the various people who have provided information in the course of the evaluation.

The proposal challenges advocates of more traditional approaches to show that the process by which a single narrative is generated can be a valid one and is not fatally distorted by the cultural and personal characteristics of the person writing the report. By

allowing the voices in the story to describe not just their observations but also their interpretations and moral judgments, the alternative approach to the narrative admits more information, both factual and interpretative.

However, it seems inevitable that multiple narratives will also demonstrate the tensions, and sometimes frank inconsistencies, between different accounts. Depending on the content, these tensions and inconsistencies may have to be consolidated, and sometimes arbitrated, elsewhere in the report. The proponents of multiple narratives thus face a complementary challenge, that of demonstrating that their method is more clarifying than confounding and is not prone to being derailed by its inclusion of disparate beliefs and perceptions.

Arbitrating between conflicting narratives raises a series of questions.<sup>1</sup> Does the report author describe separately (in discrete subsections) the various accounts of events from multiple witnesses or stakeholders, or does he give a chronological account of events that includes alternating perspectives? In either case, the report author must choose where to deal with the inconsistencies contained in different accounts. The problem already arises in respect to factual disagreements. It would presumably become a much more common one if the value judgments of witnesses in criminal cases, for instance, are to be included in a report’s narrative account.

One approach to conflicting narratives would deal with inconsistencies as they arose, in the data section of the report. This approach defies the usual convention of not mixing data and opinion. Another approach would be to ignore the disagreements in the data sections and trust the reader to hold them in mind until the conclusion section (a difficult task in complex cases<sup>9</sup>), where the author will attempt to resolve them if possible, or perhaps simply acknowledge them if there is no clear resolution.

It may be clear from the conclusion of a criminal-responsibility report, for instance, that the author does not share the view of a witness who noted that the act was cold and deliberate. How can it best be noted in a way that respects the witnesses whose views are disregarded? Defendants’ denials of events that obviously happened are often quoted without further comment, but doing justice to all of the voices in a report seems to require more than this. Proponents of the traditional model may be able to show that giving voice to an unrepresentative array of

witnesses adds nothing to the quality of a report and may even distort or weaken it.

### **Ethics**

Psychiatrists working in court have been challenged that they lack an ethics compass.<sup>10,11</sup> One response has emphasized the obligation on the person conducting a forensic psychiatric evaluation to show proper respect for the subject of that evaluation<sup>6,7,12-15</sup> To some commentators, the circumstances of a forensic evaluation are sufficiently different from those of clinical practice to warrant a separate ethics framework.<sup>12,13</sup> To others, the conflicts of values which can arise are capable of resolution within the traditions of medical ethics and by using existing guidelines.<sup>16</sup> Along with telling the truth, respect for persons has become a central tenet of forensic psychiatric ethics. The principles of respect for persons and truth telling apply to all aspects of forensic practice, including report writing.

Ensuring respect for the subject requires the report writer to take appropriate steps to protect confidentiality. It determines the content of the warning given to the subject before the report is written, and it affects the way in which that warning is presented. Respect is a central consideration in deciding whether to obtain the subject's permission before obtaining collateral information in circumstances where permission is not legally required (for instance, when the source does not hold confidential information). This circumstance is particularly relevant when the source of that information is someone known to the subject.

The relation of respect to the subject's consent raises important questions. Consent permits many things to be done respectfully that otherwise might not, from interrupting an answer to contacting the subject's family. There seem to be limits to the extent to which this is the case, however. Even if a subject has given permission for the assessor to include information from family members in a report, the inclusion of embarrassing and irrelevant material seems to show a lack of respect. Just as the victim's having consented to what was done is not automatically a defense to a charge of assault,<sup>17-19</sup> so a subject's consent does not seem always to be a defense against an allegation of disrespectful treatment by an evaluator.

To date, there has been little discussion in the literature of what amounts to an adequate explanation when informing a client of the purpose of an

examination. When violence risk is being evaluated and consent is sought to speak to a subject's family, it seems clear that the assessor should mention the possibility that the information those people provide may contribute to an outcome that the subject does not want. What of cases in which violence risk is not initially a question, yet becomes one as a result of what a family member says? And when does respect for persons make it unethical to speak to a probationer's acquaintances without his consent?

Conflicts also can arise between ensuring the validity of a forensic evaluation and showing proper respect for persons when speaking to third parties in the course of an evaluation of criminal responsibility. Nonprivileged information held by a family member or employer can be critical to such an opinion. The information held by these third parties will not usually be covered by rules of medical confidentiality. Yet showing proper respect for the person being evaluated could suggest at least informing the person that these people will be contacted and, perhaps, making that person's explicit permission a prerequisite of contacting them at all.

There are also unresolved questions regarding the timing and nature of the explanation that is given when requesting consent. People change their minds, sometimes quickly. When consent has been sought and given, does a telephone call withdrawing that consent, received after an evaluation has been completed but before any report is submitted, change matters? It is usual practice when assessing people charged with sexual offenses to inform them that statutes requiring clinicians to report certain classes of offense impose a limit to the nature of confidentiality in all settings, including forensic ones. Yet, because it is impossible to be sure what an evaluatee will say, the statutes can sometimes be implicated when no warning has been given and, hence, when no consent has been obtained.<sup>20</sup>

Respect is also a key consideration when deciding how much information, and of what kind, to include in the background section(s) of any report. The variety of the circumstances in which these decisions are made seems likely to render rules and guidelines of limited value in this area. It may be that guidance can be provided only retrospectively. In which case, peer review through professional organizations provides one means by which the exercise of discretion by evaluators can be examined. Expanding present guidelines on peer review of expert testimony<sup>21</sup> to

cover forensic evaluation represents one way of structuring this type of review.

Further questions, some of which also arise in relation to testamentary and other legal capacities, concern whether consent that has been obtained is valid. Invalid consent can result from its not having been freely given or the subject's inability to understand what is involved. One question that may come up subsequently where no conservator has been appointed is who should be able to give consent when the subject's mental state prevents him from doing so. Those who lack decision-making capacity presumably deserve the same amount of respect as other people, but their incapacity means that acting only with their assent or consent is a less reliable safeguard than it would otherwise be.

Appelbaum<sup>12,13</sup> paired respect for persons with truth telling in his initial response to the charge that forensic psychiatry lacks an ethics compass. Since then, attempts to place respect for persons into the wider framework of the ethical forensic psychiatrist have taken several forms. Martinez and Candilis<sup>22</sup> located it among four principles, the others being respect for privacy and confidentiality, respect for the consent process, and a commitment to honesty and objectivity. Following Weil,<sup>23</sup> Noriko<sup>15</sup> noted that showing respect for people is tightly bound to notions of compassion, which he places at the center of forensic ethics.

The view that the conflicts inherent in forensic practice do not require the development of a separate framework and can be addressed using traditional approaches to medical ethics, advocated by some in the United States,<sup>16</sup> has been widely supported elsewhere in the English-speaking literature.<sup>24–26</sup> Whether all of the challenges described here can be addressed through adaptations of traditional principles or require an alternative model remains the subject of theoretical development. It has also been the subject of empirical research.<sup>27</sup>

### **Coercion**

Related to the dilemma of consent for collateral contacts is the reality that forensic psychiatric evaluations are frequently conducted in circumstances that are unavoidably coercive in one or more respects. Plaintiffs in civil actions have little option but to participate in a psychiatric or psychological evaluation if they wish to pursue a claim that they have sustained psychological damage. In criminal

cases, undergoing a psychiatric evaluation may be a necessary part of mounting a successful defense or of avoiding imprisonment. For suspended employees in fitness-for-duty cases, a psychiatric evaluation may be their only way back to work.

These pressures raise the question of whether particular safeguards are needed to protect the subject, particularly the vulnerable subject, in addition to the existing efforts in the courts to balance competing interests. Related questions concern to what extent it is the job of the agent requesting the evaluation to explore these safeguards further, and to what extent responsibility also lies with the forensic evaluator.

### **Limitations on Data**

Some attorneys advise their clients to refuse to provide information to sexually violent predator (SVP) evaluators. Not all of the implications are yet clear. In practice, the refusal can apply only to certain aspects of the evaluation, such as the release of records and submitting to a psychiatric examination. It seems unlikely that a report addressing risk could properly be written in such circumstances, but the ethics terrain remains to be fully described in this confluence of criminal justice objectives and psychiatric expertise and its limits.

In dealing with these and other circumstances where the background information is incomplete, two principles have emerged with some consistency. First, any report should be transparent as to the limitations of the evaluation.<sup>28</sup> One difficulty in applying this principle is that those limitations will depend on the use to which the report is going to be put. The writer cannot always be sure how a report, once submitted, will be used by all who have access to it, and some future scenarios will always be unforeseen. Second, at some point the limitations on an evaluator presumably mean that no report can be ethically submitted, despite pressures from the justice system.

### **Reflexivity**

Under the traditional approach to psychiatric report writing, the conclusion emerges from data provided in the body of the report. The importance of not introducing new information at this stage is often emphasized. Less attention has been paid to the extent to which the content of the conclusion influences what precedes it.

Yet different conclusions seem to require different types of data and different levels of detail. A conclusion that includes a diagnosis of dementia resulting from head trauma requires particular attention in the body of the report to premorbid intellectual functioning and present cognitive function. In cases of alleged traumatic psychological damage, the data have to contain a sufficiently detailed description of the phenomenology for the diagnostic criteria of posttraumatic stress disorder (PTSD) to be addressed.

Anticipating the conclusion in this way is efficient, because it allows greater detail to be provided in those areas where supporting the conclusion seems to require it. At the extremes, however, it seems capable of suggesting a closed mind or insufficient review of relevant data. Exclusive emphasis on a history of head trauma, for instance, can suggest that other possible explanations for the patient's symptoms were not considered. Anticipating the conclusion also anticipates the likely focus of legal interest, which cannot always be done safely.

Writing effective reports thus requires a balancing of the content of the body of the report and the conclusion. Information that suggests a different conclusion from that reached by the report cannot simply be omitted, yet it has to be presented in the light of the conclusion and in a way that does not confuse. Different approaches to this quandary are practiced and may be tied to the evaluator's preference regarding the length of reports. Is it enough to acknowledge that practice and opinion on this question vary? When we do only that, we have little alternative but to tell trainees and others to choose for themselves which methodology to adopt.

### **The Role of Empirical Research**

Because the quality of a report is driven in part by the quality of the evaluation that generated it, psychiatric report writing will benefit from empirical advances that improve psychiatric history taking, examination, and diagnosis.

Improvements in the resolution and availability of neuroimaging techniques may allow the consequences of brain injuries to be mapped with less reliance on the victim's description of symptoms, thus making evaluations less vulnerable to the effects of exaggeration or malingering. Qualitative, interview-based empirical research may improve the understanding of why people give accounts of their symp-

toms that are inconsistent with the observations of others. Malingering is common in emergency rooms<sup>29</sup> and in personal injury claims.<sup>30</sup> It can coexist with real symptoms.<sup>31</sup> Presumably, it can interact with them also, but the phenomenological data to confirm this interaction are still lacking.

A further role of empirical research is to describe the terrain of present practice in report writing. The past 15 years have seen reports from a range of countries detailing the content of psychiatric reports in cases of homicide and competence to stand trial. Some of these are consumer surveys, detailing the extent to which forensic psychiatric reports meet the needs of their legal audience.<sup>32</sup> Others describe the results of analyses of report content, typically detailing the frequency with which particular elements are present or missing.<sup>33</sup> The most sophisticated include psychometric information on the inter-rater reliability of a large range of variables examined by the study, allowing the reliable description of some of the more complex aspects of writing such as the quality of the reasoning and the way in which abstract concepts, such as competency to stand trial, are conceptualized by the author.<sup>34</sup>

### **Improving Practice and Policy Development**

Some of the mechanisms by which empirical and theoretical developments in report writing can be turned to practical benefit are shared by forensic and general psychiatry. Books and peer-reviewed publications allow the dissemination of ideas. University departments employ and provide mentorship to those who develop those ideas and, through residency and fellowship programs, training to practitioners in how to apply them. They also provide an environment where those ideas can be subjected to critical examination and where developments in related academic fields can be compared and incorporated: recent developments in forensic psychiatric report narrative have incorporated developments from sociology.<sup>8</sup>

Other mechanisms by which empirical and theoretical developments can generate practical benefits are specific to forensic psychiatry. Professional organizations have both an interest in improving the quality of report writing and the means to effect change. Although attempts by some of those organizations to restrict the types of evidence against practitioners that is deemed ethical in malpractice cases have led to accusations that professional organiza-

tions place the interests of practitioners before those of the public,<sup>35</sup> perceptions such as these of conflict of interest are likely to be less problematic with respect to report writing. It is in the interest of none of the parties involved to have reports of poor quality.

Professional organizations are in a better position than attorneys and courts, the usual recipients of reports, to improve quality. There are several reasons. Professional organizations have greater expertise in their specialty. Membership usually requires the completion of an approved training. Along with regulatory bodies, such as state licensing boards and hospital credentialing committees, organizations representing general and forensic psychiatry can require that members take appropriate steps to maintain their clinical skills and influence the form that continuing education will take. Professional organizations are in a position to identify problems and help practitioners through peer review, training, and mentorship.

The American Medical Association,<sup>36</sup> the American Psychiatric Association<sup>37</sup> and the American Academy of Psychiatry and the Law<sup>28</sup> issue ethics and practice guidelines and promote professional development. Not only does it seem important that these theoretical developments continue, but their effect should be examined. Feedback from those in forensic practice regarding whether guidelines are helpful in conducting their evaluations or affect the quality of their reports in other ways permits revision and improvement of the guidelines themselves. It can also reduce the potential for cynicism and disinterest among practitioners who see guidelines as of limited relevance to their work.

## Conclusion

Improving the quality of the psychiatric report is partly a task for academic writing, but it is also a task for practitioners and for the professional bodies that represent them. The centrality of writing to forensic psychiatric practice justifies continued efforts to refine and develop the forensic report. That development, as has been suggested here, requires the application of a range of research approaches, both theoretical and empirical. It should make use of both qualitative and quantitative methodologies.

Recent developments in narrative raise questions concerning both the construction and order of report material and how multiple narratives can be included without the report's being compromised by incon-

sistencies between those narratives. Further theoretical development would benefit from empirical analysis of the various approaches, assessing their utility in factors such as conveying respect for persons, ease of constructing the report, effectiveness of communication, and perception of the author's fairness and credibility.

Further work is also needed to synthesize new approaches to the ethics of forensic work, especially in understanding how respect for persons interacts with other principles of forensic ethics and in working with an inevitably coercive justice system. Newer areas of evaluation pose ethics-related challenges that have not yet been mapped. Clinical phenomenology in areas such as the interplay of malingering and real symptoms stands in need of empirical confirmation. Report writing is itself an area of developing empirical study that must be continued and expanded. Finally, the practical influence of guidelines development on report writing should be analyzed; as more guidelines are developed, this feedback should be integrated into the process of their development.

Just as the psychiatric report reflects the practices that generated it, so the questions raised by report writing reflect broader ones that derive from and affect forensic practice as a whole. Further empirical and theoretical development of the psychiatric report will use knowledge derived from the practice of forensic psychiatry, but it will also use knowledge from other medical disciplines and from academic fields outside medicine. Psychiatric writing is an exercise in synthesis.<sup>38</sup> So is the task of improving the quality of the psychiatric report.

## Acknowledgments

The malpractice suit example in the discussion of alternative narratives was provided by an anonymous reviewer. It seemed too germane to omit.

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