



Unit 6- Forensic Issues

Special Education Advocacy Training
Comprehensive 3-Day Seminar Presented by Rene Thomas Folse, JD, Ph.D.

Schedule of Topics Each Day

Day 1	Day 2	Day 3
<p>Unit 1: Introduction to special education advocacy. Demographics, glossary and acronyms. Eligibility assessment criteria. Comparisons with DSM-IV diagnostic categories.</p> <p>Unit 2: Free and Appropriate Public Education (FAPE), the Rowley decision, Least Restrictive Environment (LRE), Aids and Services.</p> <p>Unit 3: Life Span goals and objectives, developing the big picture for the child.</p>	<p>Unit 4: De-mystifying and understanding the math, purpose and goals of psychological and educational assessment tools in educational settings.</p> <p>Unit 5: Survey of specific psychological and educational assessment measures of ability (IQ), achievement and adaptive skills.</p> <p>Unit 6: Forensic issues. Preparing your report. Testimony on direct and cross examination at hearings.</p>	<p>Unit 7: The IEP team process, goals and objective writing, and measuring success or failure. Behavior problems, special discipline rules, stay put orders, and the functional assessment of behavior.</p> <p>Unit 8: Dealing with due process litigation.</p> <p>Unit 9: Integration with other systems. Inter-System Issues.</p>

1

Writing the Report (Or Not)

- Determine the strategic value vs the disadvantage and costs of a comprehensive report and report accordingly.
- In **non-adversarial advocacy**, a report that goes to a good IEP team ahead of the meeting has strategic value.
- In **adversarial advocacy**, a report may provide discovery to the opposition. There is no legal obligation specifying how comprehensive a report must be, so a **terse report meets legal requirements**, and oral testimony will provide details.
- The “unbundled” professional service model allows flexibility.
- If I have a well focused referral question “i.e. is this child depressed, or did this child make progress?” an oral answer or short answer will typically suffice and save money.
- **There is no mandatory disclosure of the outcome of an evaluation.**

2

The Comprehensive Report

- Referral Questions
- History from informants
- Review of School Records
- Review of medical and other professional records.
- Office observation and examination
- Assessment tools and outcome.
- Observational data at school (if needed).
- IRAC Discussion.
 - Issue
 - Rule
 - Argument
 - Conclusion
- Specific Educational Recommendations (Science)

3



What is Hearsay?

- E.C 1200. (a) “Hearsay evidence” is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.
- (b) Except as provided by law, hearsay evidence is inadmissible.
- (c) This section shall be known and may be cited as the hearsay rule.



4

IEE Reports are Hearsay

- Reports of an Independent Educational Evaluator are an out of court statement offered to prove the truth of the matter asserted, thus they are hearsay.
- **But, 5 CCR 3082 specifically provides that hearsay will be allowed into evidence**, thus it is never a problem getting IEE reports into evidence.
- **BUT are not sufficient to support a finding by themselves.**
- In the event a SpEd case goes to full trial, at least one Independent Educational Evaluator must testify.



5

Due Process Hearing Procedures

- 5 CCR 3082(b) The hearings conducted pursuant to this section **shall not be conducted according to the technical rules of evidence and those related to witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.** All testimony shall be under oath or affirmation which the hearing officer is empowered to administer



6



Many Exceptions to Hearsay Rule



- Prior Statements of Witnesses E.C. 1235-1238 (“...now do you recall telling the school psychologist you were not going to allow this parent to obtain this service?”)
- Statements of Mental or Physical State E.C. 1250-1253 (“did you child say anything about feeling sad about going to school?”)
- Business Records E.C. 1270-1272 (The complete school file)
- Official Records and Other Official Writings E.C. 1280-1284 (Certified copies of public records)
- Former Testimony E.C. 1290-1294 (transcripts or summaries of other due process cases)

7

Lay vs Expert Testimony



- A lay witness is someone who has knowledge of facts by direct input into the senses. Typically they saw, heard or felt (ie. pain) something and are called to testify about what they saw, heard or felt.
- An expert witness was not there when the event happened. **They are called upon to tell us what the facts observed by lay witnesses mean.** If a judge or jury can determine what facts mean, then experts are not allowed. If they cannot, then they are necessary.

8

Direct Examination of Experts



9



Expert Witness Preparation



- Make sure you have properly prepared your expert ahead of time to avoid any pitfalls.
 - This would include making **sure that your expert has read your timeline and knows the facts.**
 - has **reviewed all evidence packets and documents** that you have,
 - knows exactly what **the legal criteria** for each issue might be,
 - and has spent an **adequate amount of time with the subject and classroom observation.**
 - Have them **obtain any scientific articles** they can to support their opinion.
 - Make sure that they **have not made any of the mistakes in testing protocols** or can justify what they have done, (avoid Ziskinizing).
 - Make sure they **have a proper license** and that they are not acting outside of the scope of their licensure.

10

Must Have Mastery of the Facts



1. You can negotiate with an expert to change their mind if they have made an error in facts or an error in medicine.
2. The time line is essential if your are shooting for #1 above.
3. You will quickly know what the expert knows and does not know. You opponent will typically be clueless.
4. You can feed the expert anything you wish as a hypothetical. **NEVER DEBATE WITH AN EXPERT AS TO WHAT THE FACT ARE.** Each **hypothetical has an opinion.** The Judge or Jury picks the facts.

11

Timeline Preparation



- When you start to review a file start your timeline at the same time.
- On the top of the timeline write down the document collection you are reviewing and the initials that will identify that document.
 - a. Sunny Sky Middle School SKMS
- Then as you review the record, write a brief note for each historical fact next the document where you found it.
 - a. SKMS 1/18/2002, teacher notes reflect concern about attention.
- Continue the process until you finish that document collection, then go over the next set of documents using a different set of initials.
- **Put in bold type anything that strikes you as important.**
 - a. SKMS 3/22/2002, parent advised that student had **bad reaction to homework.**
- Any inconsistencies will become readily apparent when you review the persons life in chronological order.
- Continue to embellish you timeline with witness accounts. If you interview your client, but them in the timeline legend with their initials, and then document their testimony in your timeline.
 - a. SKMS 3/22/2002, parent advised that student had **bad reaction to homework.**
 - b. Parent 3/26/2002, parent seeks medical attention with pediatrician Dr. Smith.

12



Timeline Analysis



- Identify any inconsistency or irregularity in the history.
- Have absolute mastery of the facts and the ability to find the document where you found the facts.
- Even a complex and convoluted case becomes simple when you organize it this way, and your anxiety level will come down.
- **Have the ability to know what the experts do not know.**
- You can share the timeline with your colleagues so that they can grasp the facts quickly in your absence.
- Help you prepare the file and remember what the file is all about after periods of inactivity or when you hand the file off to a colleague.
- Help you **flesh out issues**, what facts are really important and how to get them into evidence **i.e. this becomes your trial plan.**

13

Same Topics as The Comprehensive Report

- Qualify as an Expert
- Referral Questions
- History from informants
- Review of School Records
- Review of medical and other professional records.
- Office observation and examination
- Assessment tools and outcome.
- Observational data at school (if needed).
- IRAC Discussion.
 - Issue
 - Rule
 - Argument
 - Conclusion
- Specific Educational Recommendations (Science)

14

Expert Testimony Foundation



- E.C. 720. (a) A person is qualified to testify as an expert if he has **special knowledge, skill, experience, training, or education** sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.
- (b) A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony.

15



Foundation



- Obtain a copy of your expert's curriculum vitae. Use this as a guide in qualifying them as an expert witness. It does not take much to be an expert. Simply ask them questions that solicits direct testimony consistent with what is on the curriculum vitae. If there is anything of significance on the curriculum vitae spent some time having them embellish that aspect of their career.

16

Report of Data Collection



- Have your expert at this time lay out all of the data they received in order to make or form their opinion. Obviously they will have taken a history from a number of people. They will have read documents and have them indicate what they read. They will have done some type of observational process of the subject typically a clinical examination. Have them outline how they did the examination, and what they saw. They will then have administered some kind of diagnostic testing and go over what they administered and why, what was done, what was scored, and what the results showed.

17

The Opinion



- After the ask for reports of what data they collected, then have your expert testify what opinion they formed as a result of the data collection process.
- This is the heart of why you are calling them as an expert witness.
- Become slightly argumentative with them and have them justify their opinion so that is much embellishment in support of their opinion goes into evidence as possible.
- The bottom-line opinion alone without vigor is not exceptionally persuasive.

18



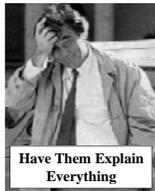
Putting on Direct



- Trial work is **the theatrics of telling a convincing story.**
- Forensics is **telling a complex story to an less sophisticated listener.**
- The storyteller (witness) and facilitator (lawyer) already know the story and assume the unsophisticated listener can “get it” as easily as they can.
- They cannot.
- **Slow down, ask step-by-step questions that walk through everything in simple lay terms.**

19

Who is Your Audience?



- You have unique expertise, and unique acronyms and terminology.
- The **Hearing Officer** has heard some of this before, so **has less than, but some expertise.**
- On appeal, the case goes to a **federal district judge** who has less expertise than OAH ALJ. His law clerk will do most of the work. Everything must be explained in the transcripts of oral or written evidence, and **if not explained there will be not understood well.**
- **Put on testimony that embellishes a record for the lowest level of sophistication even though it might “bore” a higher level.**

20

Dealing with The Bad Parts of Direct Testimony (Attorney Role)



- It is rare that you will get a witness on direct that has all good and no bad testimony about your case.
- There are **two ways to deal with this.**
 - If you are reasonably certain the OP knows about it and will explore it on cross, then go ahead and bring it out first and steal some of the thunder out from under the OP.
- If you are reasonably certain the OP has no clue about the bad part, and there is a good chance it may go by the boards, then leave it alone, and hope for the best.

21



Dealing with The Bad Parts of Direct Testimony (Witness Role)



- The most credible witness is one who **remains objective, tells the truth, and does not try and advocate for “their side”** (even though a lawyer may disagree).
- There are many points about the other case that you can and should concede, a witness who is entrenched and “does not give an inch” loses credibility to an expert judge (rather than a jury) over time.
- SpEd cases are tried before judges not juries.
- **When I encounter a “don’t give an inch” hired gun witness, my strategy is to get them to stick to their guns to the point of absurdity.** (Drug and alcohol history example)

22

My Expert is Smarter than Yours! Strategy.



- At a very cursory level, parties to litigation take the position that “my expert is smarter than your expert”.
- This will focus on the strength of a resume or curriculum vitae, or the reputation of one graduate school over another.
- At a deeper level, there are fundamental reasons why one expert should be believed more than another.
- This is the CSI syndrome.
Does true science and forensics lead to the truth?



23

Compelling Evidence

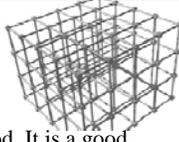


- Assuming Evidence is Admissible, the next question is: Is it compelling?
- This, in essence, is the heart of the litigation in special education cases.
- How much “weight” should be given to expert evidence submitted to the OAH?

24



The I.R.A.C Analysis Our Framework



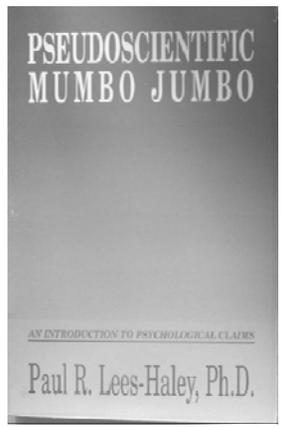
- Lawyers answer State Bar essay questions using the I.R.A.C method. It is a good framework to use to analyze your case before trial.
 - I - What are the Issues to Litigate.
 - R- What are the Rules of Law for each issue
 - A- What are the Arguments for and against each issue. **The Argument is the MOST IMPORTANT PART.** This shows you are aware of all sides, and sorted through it. Without this you will be blindsided and unprepared
 - C - Form a conclusion as to what argument is supported by a preponderance of the evidence.

25

The Daubert Standard

DAUBERT v. MERRELL DOW PHARMACEUTICALS, INC.,
509 US 579 (1993)

The Daubert trilogy of Supreme Court cases - Daubert, Joiner, and Kumho Tire (Daubert applies to all expert testimony not just scientific), codified in Federal Rule of Evidence 702 - has established new rules for the admissibility of scientific evidence **in federal court.**



What is the Daubert Standard?



The Supreme Court explained that in order for expert testimony to be considered reliable, **the expert must have derived his or her conclusions from the scientific method.** The Court offered "general observations" of whether proffered evidence was based on the scientific method, although the list was not intended to be used as an exacting checklist:

- 1) Empirical testing: is the theory or technique falsifiable, refutable, and testable.
- 2) Subjected to peer review and publication.
- 3) Known or potential error rate.
- 4) Whether there are standards controlling the technique's operations.
- 5) Whether the theory and technique is generally accepted by a relevant scientific community.

27



State (Not Federal) Daubert Adoption



www.daubertontheweb.com

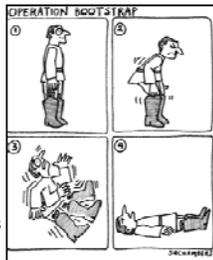
Daubert Decisions by Field of Expertise

Fields are listed alphabetically. To see how experts in these various fields are faring, check the [Leader Board](#). An [effort](#) is made to include all pertinent federal appellate decisions issued on or after January 1, 2000. Earlier decisions from the federal circuit courts may also be included at the webmaster's caprice. State decisions are not included. Please notify the webmaster if you believe a pertinent decision has been overlooked. Decisions in each field are listed by [circuit](#) (in ascending numerical order) and in reverse chronological order within each circuit. Links to judicial opinions are generally to official court websites or to university sites offering opinion archives. Many federal appellate decisions are also available, for free, at [findlaw.com](#) and [lexisone.com](#).

Accident Reconstructionists	Criminologists & Forensic Experts	Marketing Experts
Accountants & Economists	Dentists	Metallurgists
Admiralty Experts	Economists & Accountants	Nurses
Anthropologists	Engineers	Pharmacologists
Appraisers	Fire Experts	Physicians
Architects	Forensic Experts & Criminologists	Polygraphers
Attorneys	Geologists	Psychologists & Psychiatrists
Aviation Experts	Historians	Sociologists
Bankers	Horticulturalists	Statisticians
Chemists	Hydrologists	Toxicologists
Chiropractors	Linguists	Translators
Computer Experts	Marine Biologists	Veterinarians

The Old Frye "Bootstrap" Standard

(*Frye v. United States* 293 F. 1013 (DC Cir. 1923)) involving the admissibility of polygraph evidence. Under *Frye*, the Court based the admissibility of testimony regarding novel scientific evidence on whether it has **"gained general acceptance in the particular field in which it belongs."** The trial court's gatekeeper role in this respect is typically described as conservative, thus helping to **keep pseudoscience out of the courtroom** by deferring to those **in the field**.



30



Cross Examination of Experts



31

Goals of Cross Examination



- Turning their expert into your expert (rare but possible,).
- An expert will change his/her opinion if there has been an **error in history or facts, or an error in medicine or science (my first jury trial example)**. This section will explore both of these areas of expert examination
- If you cannot do the above, other goals in cross-examining are
 - to **obtain favorable admissions or concessions**,
 - **discredit unfavorable testimony** and
 - **to impeach the witness**.
- These goals can only be attained by way of thorough preparation. The cross examination needs to be carefully and skillfully planned and executed. **Many attorneys have no plan, no point, and little focus to their expert cross examination.**

32

Plan Your Strategy

PLAN FIRST!

- Before you start with testimony, **have a plan** for your cross-examination. It is improbable that you cannot accomplish at least part of the goals you set.
- For example, **almost every case has at least some concessions** the opposing witness can make about your case.
- Make sure your cross is focused, to the point, and achieves some benefit, and
- **do not cross-examine a witness if you have nothing to accomplish, as a pointless non-productive cross-examination makes the witness look bullet proof.**
- If you have no plan and no belief that you can make points, do not ask any questions, just dismiss the expert as though he/she was so ineffective that questioning was unimportant.

33



Concessions and Admissions Examples



- **Essential Facts Concession:** go through the timeline and get the school psychologist to concede that her investigation supported the key facts you need to establish.
- **Essential Principles Concessions:** In an LRE case have the school psychologist testify about all the advantages to a child for being in the LRE, (one of the four elements).
- **Essential Terms Concessions:** You can have the school psychologist testify and explain certain terms (ie. What is a standard score etc.) that will cost you less money than having your expert do this.
- **Essential Science Concessions:** If your expert used a different tool (ie. Stanford Binet) have the school psychologist explain what it is, how it works, and that it is a valid and reliable highly regarded measure of an IQ.

34

Errors in History

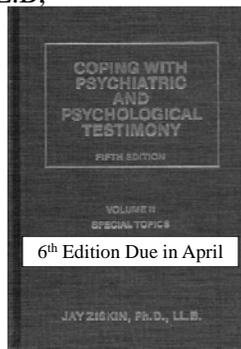


- My detailed, chronological **timeline gives me complete mastery of the facts.** I know everything there is to know, where it is and how to find it.
- **I can use them or lose them.**
- **Start with “finding out what the answer will be before you ask the question”** (ie “Doctor would it make any difference if Or...is it important to make sure you have a history of... and why).
- **Then if it seems like you will get somewhere, suggest the correct facts.**
- If the witness does not accept the fact you give, then give it as a hypothetical, and then prove up your hypothetical.

35

Errors in Medicine or Science Jay Ziskin, Ph.D. LL.B,

Coping With Psychiatric and Psychological Testimony w/2000 Supplement (3 Volume set) (5th ed) by Jay Ziskin (ISBN: 1879689049). This three volume work, updated by supplements, is an invaluable addition to the bookcase of the lawyer with an interest in litigation involving evidence from psychiatrists, psychologists or those in related fields. It provides a detailed overview of the methodology, terminology and techniques of the various practitioners the trial lawyer is likely to encounter, along with practical examples of cases concerning evidence from such witnesses.





Example of Test Administration Problems - Order Effects

If you read the manual for almost all psychological tests, **the author does not discuss the administration of his test in a battery**. Instead, the instructions outline the **administration as a stand alone measure**. Nonetheless, it is rare that any evaluator administers any test by itself. Most of them formulate a battery of tests several of which are given on the same day. Thus no individual test is given as a stand alone measure as presupposed by the manual. In psychology there is a phenomenon known as "order effects". In essence, one questions whether or not the order in which things are done make a difference in the outcome.

There are many examples in the literature where the order in which to psychological tests are given on the same day effect the outcome. (Ziskin page 676 et.seq.) John Exner (1974) for example proved that there was a difference when the MMPI and Rorschach were given together and in different relationships to each other. Brody (1990) found that reports of depressive symptomatology increased as the number of prior questionnaires increased. See Lasky transcript Page 207.

40

Which Bucket Does That Comment Go In Doc?



Science Bucket



PseudoScience Bucket 41

Challenging the Expert's Background/Qualifications (Ziskin: Ch 8,9)

- 1) **No license at all:** The Ph.D. degree does not imply that someone is licensed to practice a profession. (The therapist from a psychiatric hospital example)
- 2) **Wrong License:** The scope of practice of a licensed psychologist, school psychologist, licensed clinical social worker, marriage and family therapist is clearly defined in the Business and Professions code, yet **many of them practice outside the scope of their practice without objection.**
- 3) **Right License, Wrong Experience:** Establishing that the expert has a low level of specialty training, or a lack of licensing or certification, for example, reflects adversely on the witness' ability to form a valid opinion. You will be shocked at **what is not included** in a psychiatric residency program.
- 4) **Right License, Pseudo Experience:** A licensed physician can practice psychiatry and call himself a psychiatrist with no official sanction on that designation. A licensed physician may also complete a residency, and fail and neglect to pass board examinations and call himself a "Board Eligible" Psychiatrist but as time goes on you are no longer board eligible..
- 5) **Right License, Right Experience, Cannot Use Tools:** I have encountered many psychiatrists, and a few psychologists who use tools they do not understand or have no experience in using. Board Certified psychiatrists typically never take a single class in psychological testing. (Lasky Deposition Example P.208 or MMPI-2 "what does this mean?" example).

42



DEPARTMENT OF CONSUMER AFFAIRS

BOARD OF PSYCHOLOGY

A Licensed Psychologist

- **Licensed Psychologists:** A licensed psychologist is a person licensed under the provisions of Business and Professions Code section 2900 and following, this is known as the psychology licensing law. Within the scope of practice, **a licensed psychologist is authorized by law to diagnose a “mental disorder” defined in DSM-IV.** This is seen in B&P §2903 description of the scope of practice of psychology as follows:

43

Business and Professions Code 2903



- B&P 2903.**The practice of psychology is defined as** rendering or offering to render for a fee to individuals, groups, organizations or the public **any psychological service** involving the application of psychological principles, methods,**The application of these principles and methods includes, but is not restricted to: diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders of individuals and groups.....**

44

Educational Psychologists



- Educational Psychologists need only have a masters level degree, and they may work under the auspices of a school or they may be licensed to work independently. **When they work under a school, they obtain a credential to do so, and cannot function outside that setting for a fee.**
- If they choose to work outside that setting they must have a Masters Degree and an educational psychology license, and their scope of practice is limited by Business and Professions code 4896.10 as follows:

45



Licensed Educational Psychologist LEP



- B&P 4986.10. (a) A licensed educational psychologist shall be authorized to perform any of the following professional functions pertaining to academic learning processes or the educational system or both: (1) **Educational evaluation, diagnosis, and test interpretation limited to assessment of academic ability, learning patterns, achievement, motivation, and personality factors directly related to academic learning problems.** (2) **Counseling services for children or adults for amelioration of academic learning problems.** (3) Educational consultation, research, and direct educational services. (b) It is unlawful for any person to engage in the practice of educational psychology unless he or she holds a valid, unexpired, and unrevoked license under this article.

46

Credentialed School Psychologist



- **Credentialed School Psychologists** Must act inside the environment of the school district and thus not for a fee. Their authority and scope of practice is limited by the California Education code which reads with respect to credentialed school psychologists as follows:
- E.C. 49422 (2) **The application of these principles and methods includes, but is not restricted to, procedures on interviewing, psychoeducational assessment, diagnosis of specific learning and behavioral disabilities, and amelioration of learning and behavioral problems of individuals or groups**

47

Can a School Psychologist Contest a Diagnosis?



- Thus, in a 504 team meeting, if you have a physician or licensed psychologist that diagnoses a mental disorder, such as ADD, the school psychologist cannot contest this.
- At an IEP team meeting where you present evidence that a student has a depressive or anxiety disorder as part of an ED eligibility issue, a school psychologist cannot contest the diagnosis.
- **They CAN administer tests** about an emotional state and discuss the outcome, but cannot go into the existence or non existence of a diagnosis of a mental disorder.

48



Examiner Bias (Ziskin Ch 6)



- The primary role of the school psychologist is to evaluate children to determine **the reasons for learning and behavior problems**. When a child has trouble learning or behaving in school, the source of the child's problem can usually be traced to one or more of five causes.
 - First, the child may be misplaced in **the curriculum**, or the curriculum may include faulty teaching routines.
 - Second, **the teacher** may not be implementing effective teaching and/or behavioral management practices.
 - Third, the principal and/or other **school administrators** may not be implementing effective school management practices.
 - Fourth, **the parents** may not be providing the home- based support necessary for effective learning.
 - Fifth, **the child** may have physical and/or psychological problems that contribute to learning problems.

49

Dr. Galen Alessi - Study



- Dr. Galen Alessi, Professor of Psychology at Western Michigan University, conducted a fascinating study on school psychologists in 1988 "**Diagnosis Diagnosed: A Systemic Reaction**" published in *Professional School Psychology*, 3 (2), 145-151
- **50 School psychologists were surveyed** who had each performed about 100 assessments in the prior year, or a **sample of 5000 evaluations**.

50

5000 Cases Blame the Parent or Child



- None ascribed problems to curriculum factors
- None targeted teaching practices
- No one criticized administrative practices
- Parent and home factors were attributed in 10% to 20% of the cases
- The child was to blame in virtually 100% of the cases.

51



“School Culture” Concessions



- When Dr. Alessi shared his results with the school psychologists, **many protested that all five factors are indeed responsible for school problems in the cases they studied, but that informal school policy (or “school culture”) dictates that conclusions be limited to child and family factors.**
- Many feel that they **could lose their jobs** were they to invoke school-related factors. Certainly, they claim, their professional lives would be made very uncomfortable . . . fact remains that no school psychologist in the group had determined that any existing problems were due to school-related factors." (Page 149)

52

Challenging Science - What is Pseudo Science?



- Not everything published in a medical journal is science.
- There are “anecdotal” reports that have nothing to do with any experiment.
- A practitioner that writes about a case history where he/says “I did this to my patients and most of them got better” is an anecdotal (case history) story.
- This is not science at all.

53

What is Weak Science?



- The next level above an anecdotal article, is an article that appears to be an experiment.
- However at close examination by someone who understands scientific method, the design of the study is so poor, that the conclusion drawn is very weak.
- A poorly designed study is not well “controlled” for confounding variables.

54



Confounding Variables



- The point of this evaluation scheme is to determine how well designed the study was.
- Is it good science, or “junk science”.
- The biggest issue is to design a study that limits “confounding variables” that can effect the outcome.
- Placebo effect is an example of a confounding variable. A blind or double blind or triple blind study is designed to circumvent the confounding variable of the placebo effect.

55

WorkComp - ACOEM “Strength of Evidence” Rating System

Example*



- The Rating system asks and answers the following questions with a rating scheme for each.
- Is the evidence-based medicine a **randomized** control trial study? Is the evidence-based medicine consensus based? **Was the physician** providing the treatment in the evidence-based medicine **study blinded**? Was the person who measured the success or failure of the evidence-based medicine treatment blinded to the treatment allocation? **Was the assessor blinded**? **Was the patient** who received the evidence treatment **blinded**? Was there appropriate randomization? Were there multiple interventions in the evidence-based medicine study? Were there improper exclusions of patients in the evidence-based medicine study due to comorbidities, age, past history, or gender? **Was the drop out rate under 20%**? Was there significant biases, some biases, or few biases?

*§9792.22. Presumption of Correctness, Burden of Proof and Strength of Evidence. 56

The Base Rate Problem of all Tests – Ziskin Page 688

Psychological Testing’s Dirty Little Secret: Over 40 years ago, Professor **Meehl** who was then the president of the American Psychological Association, and who was disturbed at the emerging prevalence of the use of psychological tests to categorize subjects published **his classic article** demonstrating the fallacy in using any cutting score where no base rate is known. (Meehl PE, Rosen A. 1955. *Antecedent probability and the efficiency of psychometric signs, patterns, or cutting scores*. Psychological. Bulletin. 52:194-216). **He identified three classical problems** that further complicate the task of evaluating the information value of data sets.

57



Advocacy Class - Day 2



**2009 Annual
Special Education
Advocacy
Training for
Parents,
Attorneys,
Psychologists
and Educators**

Rene Thomas Folse, JD, Ph.D.
Licensed Psychologist (PSY 11415)
Attorney at Law (61144)



58
