



Credibility:

The layers of the psychologist's report

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A useful psychologist's report to the court for sentencing could have at least three layers of credibility. Firstly there is the basic layer that consists of the client's self-reports. Secondly, there is the expert layer where conclusions are drawn from the client's self-reports. Thirdly, there is the tested or corroborated layer.

At the basic layer we have the client's self-reports as the primary source. The report will present what the psychologist learns from the client. If the psychologist's report has any credibility at this basic level, where does that credibility come from given that the whole report could be just hearsay?

At the very least, a psychologist should be capable of presenting the client's self-reports in a well-structured and accessible format. The credibility of the report, at that basic level, would hinge on factors such as accessibility, readability and whether it gives a clear picture. The story would have to fit together with no loose ends.

Although not ideal, a report with this basic credibility might be the best that can be done for the court at the time. For example, the client might be on remand and the psychologist has to make the most out of just one visit. The harsh reality of the matter is that the Legal Aid funding for these reports is barely enough to cover a short time with the client and then there is barely enough time to sit down and write the report.

Other factors that might restrict the report to the basic level could be literacy or language barriers. The client may not be able to read or write or even speak English. If this is so, then there is no scope for the use of psychometrics. There is no way that the client under these circumstances can assist by providing a written history in preparation for the interview.

At the very least, a well written report with this basic credibility could assist the magistrate or judge to get a handle on the subjective case. Such a basic report could at least contribute to establishing special circumstances. If the report helps the magistrate or judge in any way, then the report was worth the effort and cost.

At the next level of credibility, the expert level, the psychologist is applying *specialised knowledge* to the client's self-reports. The knowledge is

specialised in the sense that it's not knowledge that is just generally available; and would also be the type of knowledge that is beyond the scope of knowledge for a magistrate or judge, but would be useful knowledge all the same.

If I'm talking to a builder about building structures, then I should be able to trust him and perhaps even take his advice. The same prerogative would also apply to magistrates and judges when reading a psychologist's report based purely on opinions from the client's self-reported history.

A psychologist is more than capable of reporting the client's history. From the history the psychologist is quite capable of drawing certain conclusions to do with the client's mental status and functioning. Such opinions could include a diagnosis and perhaps a treatment plan. If there is a connection between the diagnosis and the offence then the psychologist could present a point of view. At the expert level, a psychologist could also comment on motivation, contrition and remorse, and mitigating factors.

On the matter of psychologists proving a credible diagnosis, it is important to understand the difference between the psychological and the psychiatric. They are not one and the same thing. For example, a psychologist is perfectly capable of providing diagnoses and treatment plans for depression, anxiety, posttraumatic stress disorder (PTSD), etc. Likewise a psychologist is capable of recognising psychosis, schizophrenia, bi-polar, but would hesitate to stand by a diagnosis without a psychiatrist's confirmation; and a psychologist certainly would not have an opinion about drug-therapy for those psychiatric conditions.

At the next level of credibility the psychologist's report is tested or collaborated in some way. There would be at least three ways this can happen. Firstly, there is the option for testing the evidence under cross-examination. Secondly, the report might have inbuilt collaborative features such as psychometrics and references to primary sources other than the client. Thirdly, other reports, before the magistrate or judge, could be consistent with the report in question.

Case Law gives us clarity on the issue of testing the evidence by way of cross-examination. In Devaney (2012) we learn that at the basic level, where a

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report relies on the client's self-reports, the content of the report can be tested by way of cross-examination of the client. If the client is not available for cross-examination, then the Case Law is clear, a psychologist's or psychiatrist's report can easily be dismissed by a magistrate or judge.

Likewise, in *Devaney*, we learn that a magistrate or judge might think twice before he or she dismisses an opinion provided by an expert's report without testing the opinion by way of a cross-examination of the expert. In other words the court cannot dismiss an expert opinion without cross-examination of the expert.

Psychometrics offer the potential to add credibility to a psychologist's report. The three main functions of psychometrics are to assist in making a diagnosis, to measure intellectual functioning and to test the reliability of the client's self-reports. For example, a psychologist will be able to say, "in my opinion this man is depressed", or "in my opinion this person has an intellectual disability". The psychometrics do more than just corroborate the professional opinion by providing a standardised score. In other words the psychologist is then able to state the percentile-rating for the individual in relation to the population.

With any self-reports, whether they are given as history or given by way of responses to a pencil and paper psychometric, there is always the issue of "faking good" or "faking bad". To this end, there are many ways to assess malingering, social desirability, impression management and self-deception. If self-reports are to be relied upon then there needs to be some way of testing the reliability of the client's responses. By doing so, the third layer of credibility is enhanced.

A further enhancement to the third layer of credibility is for the psychologist to cite documents or reports from sources other than the client. These other sources can include the client's medical record, or letters or reports to the GP from psychiatrists or other mental health professions. Of course if the psychologist has formed opinions based on the totality of the client's self-reports, the other sources and the psychometrics, then the report will have some substance.

It is true that any psychologist's court report for sentencing could rest on one, or two or three layers of credibility. In the current Legal Aid funding environment there is very little time to produce the report. The bulk of the time must be spent on the interview and the actual writing. These are both significant chunks of time that are

in themselves barely covered by the scheduled grant. With the current state of funding perhaps the courts are really only interested in a psychologist's reports with only basic credibility.

Going by the Australian Psychological Society's rate for psychologist's time, the Legal Aid grant covers about three hours work. In reality it requires at least two hours to interview the client that leaves one hour left to write the report; whereas in reality a report could take eight hours to produce.

So to produce a report that has all three layers of credibility requires two important ingredients. One is a very well organised psychologist who is prepared to sacrifice his or her own time. And the other is a highly cooperative client with a high degree of literacy, insight, and a good memory. Speaking for myself, as a report writer, I will always aim for the three layers of credibility, because it is always more satisfying to produce a report of substance. Having said that, I will do my best with what I've been given. At the very least it is important that I understand the issues of credibility, even if I can't control all the variables, there is always the ideal of perfection.

Devaney (2012), New South Wales Court of Criminal Appeal,
Devaney v R [2012] NSWCCA 285.