ATTORNEY DEPOSITION GUIDE

For Questioning A Domestic Violence "Expert"

By

Eric L. Nelson, Ph.D.

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RETAINING DR. NELSON

If a deposition transcript is provided, Dr. Nelson can be retained to write a report which scores the ECAT-MFA responses of a DV "expert", ranking her/him in one of three categories: 1) Demonstrates adequate empirical skills, 2) Demonstrates some empirical skills, or 3) Demonstrates a lack of empirical skill. An example report is provided in chapter six. Dr. Nelson is available as a consultant, declarant or *amicus curiae* contributor. Check https://aeqpub.com for the most current way to reach Dr. Nelson.

Semper verum dico

Eric L. Nelson, Ph.D.

I have six higher education degrees:

- A.S., Administration of Justice, Moorpark College
- B.A., Psychology, California State University Northridge
- M.A., Marital & Family Therapy, Azusa Pacific University
- M.A., Sociology, University of California Davis
- M.S., Forensic Science, National University
- Ph.D., Criminology & Criminal Justice, UC Davis [A]

I have many peer-reviewed publications divided among the following fields:

- Psychology
- Forensic Science
- Criminology
- Criminal Justice/Law Enforcement
- Military Intelligence/Counterintelligence
- Indexing

My work experience includes:

- USMC Counterintelligence specialist
- Police officer
- Adjunct and Assistant Clinical Professor
- Forensic analyst
- Chancellor's liaison to public safety
- Public health research analyst
- Empirical researcher
- Peer reviewer for 11 journals

I developed a six step best practice model for the police investigation of domestic violence which, on average, triples rates of prosecution and doubles rates of conviction It was re-published as an FBI training bulletin. I also published a best practice for the police organizational response to DV in the Wiley *Handbook of Violence and Aggression* I wrote the critically acclaimed investigative expose, *The Judicial War On Men* (available at https://dvfacts.com).

NOTES

A. I earned my Ph.D. in Criminology & Criminal Justice through the individual doctoral program at the University of California Davis. The individual program allows promising graduate students to complete important research that does not easily align with any of the academic departments on campus. The program is supervised by the Graduate Dean and a cross-disciplinary panel of professors. I was fortunate to be awarded a Graduate Dean's fellowship which paid my tuition, relieved me from the need to teach and granted me a salary.

My graduate work examined a year's worth of DV investigations by a mid-sized police agency (N=1,810), with detailed examination of n=366 randomly chosen cases across 226 data. I studied the elective actions of first responding police officers and their relationship to rates of prosecution and conviction. From these data I developed the six step best practices model for DV investigation by first responding police officers described above. I was able to publish five peer-reviewed journal articles arising from this study, these being conveniently used as five of the eight chapters in my dissertation (Ch. 2, 3, 4, 6, & 7, see B & C below).

I used my dissertation to introduce a new form of criminology: *Problem-Solving Criminology* (PSC).[E] PSC targets practical problems in policing by empirically assessing very large numbers of variables in order to identify those with significant relationships to outcome(s) of interest. These are then assembled into best practice action models for use by police.

B. See Eric L. *Nelson, Police Controlled Antecedents Which Significantly Elevate Prosecution and Conviction Rates in Domestic Violence Cases*, 3 Criminology & Criminal Justice 526, (2013a), http://crj.sagepub.com/content/13/5/526; Eric L. Nelson, *Relationship Between Individual Police Officer Work Habits and the Stated Reasons Prosecutors Reject Their Domestic Violence Investigations*, 3 Sage Open 4, 1, (2013b), http://sgo.sagepub.com/content/3/4/ 2158244013511826; Eric L. Nelson, *If You Want to Convict a Domestic Violence Batterer,*

List Multiple Charges in the Police Report, 4 Sage Open 1, (2013c), https://journals.sagepub.com/doi/pdf/10.1177/2158244013517246; Eric L. Nelson, *Domestic Violence Sentencing: Coefficient to a Natural Process That Already Reduces Recidivism Simply as a Function of Aging*, 2 Crime Science 1, (2013d), http://www.crimesciencejournal.com/content/pdf/ 2193-7680-2-9.pdf.

C. Eric L. Nelson, *Investigating Domestic Violence: Raising Prosecution and Conviction Rates*, FBI Law Enforcement Bulletin, (Dec 2013e), http://leb.fbi.gov/2013/december/investigating-domestic-violence-raising-prosecution-and-conviction-rates

D. Eric L. Nelson, "The role of police in domestic violence" in Peter Sturmey, ed, 3 *The Wiley Handbook of Violence and Aggression*, 9, § 93. https://bit.ly/2XXPY7Q.

E. Eric L. Nelson, *Employment of Problem-Solving Criminology To Develop A Best Practices Investigative Method For Police To Use When Investigating Domestic Violence Crime*, dissertation accepted by the University of California, Davis in partial completion of the degree of doctor of philosophy (2014), https://bit.ly/2LeHQsC.

Ch.	TITLE	Pg.

PROLOGUE

In agriculture winnowing is the act of sifting and separating (Merriam-Webster) in order to free grain from chaff (Random House Unabridged). In law, "experts" are winnowed through close examination in order to separate *bone fide* from unqualified or fake. "If you winnow a group of things or people, you reduce its size by separating the ones that are useful or relevant from the ones that are not" (Collins Advanced English). Winnowing is an act of quality control meant to "reduce a large number of people or things to a much smaller number by judging their quality" (Cambridge).

Tara Reade exemplifies a set of domestic violence "experts" long overdue for winnowing. Two general characteristics distinguish them:

1. They lack empirical training. As such they are incapable of distinguishing between well done and badly done research. Consequently they will testify to false "facts" about DV that are derived from deeply flawed studies.

2. They present feminist dogma or personal belief as if they are empirical facts.

The Monterey County District Attorney's (DA's) office used Reade, who identified herself Alexandra McCabe at the time, to provide paid "expert" testimony about DV in at least a dozen cases. They now admit Reade's credentials were not verified.[1] Chief Assistant DA Berkeley Brannon reports, "We are investigating whether Ms. McCabe gave false testimony under oath." [2] Unfortunately, the Monterey Co. DA's office is only looking at whether Reade falsified her credentials and not whether she testified to false facts about domestic violence.[3]

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[1] Unattributed, *State Prosecutors Are Investigating Whether Biden Accuser Tara Reade Lied Under Oath About Her Credentials When She Was A Paid Domestic Violence Expert In Criminal Trials*, Associated Press (May 27 2020); Stephen Stock & Michael Bott, *Monterey District Attorney Paid Biden Accuser Tara Reade $2,800 To Testify As An Expert*, NBC Bay Area (June 10 2020).

[2] Unattributed, *Biden Accuser Tara Reade's Credentials, Expert Testimony Under Scrutiny By Monterey Prosecutors*, CBS San Francisco (May 28, 2020).

[3] Reade reports graduating from Seattle University School of Law in 2004. Alexandra McCabe, *Defying The Rule Of Thumb: A Domestic*

   This deposition guide provides trial attorneys with a method to winnow *bone fide* DV experts from those who are unqualified or fake. The questions and method supplied herein are meant to assist this winnowing.

Violence Survivor's Story, Monterey County Weekly (May 20 2020). A picture provided by Reade to the Monterey County Weekly shows a woman in a graduate robe being frocked. Mary Duan & Asaf Shalev, *Convictions Could Be Challenged As Defense Attorneys Question Tara Reade's Credentials*, Monterey County Weekly (May 21 2020). In the picture no markings of a school are seen and it is not certain Reade is the individual who is pictured. It would have been easier to establish her *bone fides* as a law school graduate by providing an official transcript. Antioch University disputes Reade's claim she earned a bachelor's degree there. Associated Press, *supra*, May 27, 2020.

CHAPTER ONE

Introduction

Where facts are few, experts are many
(Unknown) [4]

Goals of the Chapter:

1. Introduce the problem of DV "expert" witnesses who describes as true facts that have been falsified empirically, are unconfirmed dogma or personal belief.

2. Introduce a running scenario.

In federal court the 'Daubert standard" is used to determine if expert testimony will be admitted (*Daubert v. Merrell Dow Pharmaceuticals* 509 U.S. 579, 1993).[5] Previously the "Frye" standard was applied (*Frye v. U.S.* 293 F. 1013, D.C. Cir. 1923). Some states use Daubert and some use Frye.

- A Daubert challenge asserts the testimony of an expert does not proceed from scientific knowledge which is reliable, relevant, or both.

- A Frye challenge asserts the explanations of the expert are not scientifically sound and are not widely accepted in the scientific community.[6]

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[4] Many sources attribute this quote to Donald R. Gannon.

[5] Daubert is an interpretation of Federal Rules of Evidence, Rule 702. In *General Electric v. Joiner* the Supreme Court clarified a trial court can exclude expert testimony when there are gaps between the evidence and the expert's conclusion (522 U.S. 136, 1997). *Kumho Tire v. Carmichael* applied the Daubert standard to expert testimony from non-scientists (526 U.S. 137, 1999).

[6] If feminist dogma is the interpretive framework relied upon by a DV "expert", the meaning of the "scientific community" becomes important because the feminist explanation of DV is popular in many parts of academia even though it is unscientific. However, if "scientific community" is defined as the community of empiricism then the feminist explanation is on weak footing because many of its

Evidence developed using the method of this guide can support a motion to exclude (MTE) if the "expert" is deficient in one or both of the following:

1. The witness lacks the empirical knowledge, skills, and experience needed to distinguish between reliable and unreliable studies on domestic violence. A lack of these skills renders the witness vulnerable to reporting empirically false facts and to ignoring well established facts about domestic violence. This is a Daubert challenge with crossover application to Frye.

2. The witness is relying upon scientifically unsound explanations in her/his description of general characteristics of domestic violence, and her/his interpretation of the facts of the case. This is Frye challenge with crossover application to Daubert.

Many domestic violence (DV) "experts" lack empirical knowledge, skills and experience (KSE's). They make claims about DV in reports, declarations and testimony which are empirically deficient, incorrect or misleading. Often their claims are rooted in feminist dogma[7] not empirical science. False facts about domestic violence can mislead finders of fact and harm men who may be innocent and falsely accused.

An expert is supposed to demonstrate "mastery of a particular subject" (Merriam-Webster). They are to be "a person with a high level of knowledge or skill relating to a particular subject or activity" (Cambridge) who possesses "special training, skill, or familiarity... in regard to some professional or technical matter" (Black's). The highest level of expert knowledge about DV would be someone who:

*   Possesses of advanced empirical knowledge, skills and experience. These enable an individual to distinguish

fundamental explanations have been subjected to empiricism and proven false.

[7] "Dogma" is "established opinion" (Merriam-Webster), "prescribed doctrine proclaimed as unquestionably true by a particular group" (Random House Unabridged), a "statement of ideas [that are] accepted uncritically (Farlex), "a system of beliefs... people are expected to accept that it is true, without questioning it" (Collins), a fixed... set of beliefs that people are expected to accept without any doubts (Cambridge).

between well done studies that can be trusted and badly done work which should not be consulted <u>or</u> repeated.

- Possesses of thorough knowledge of empirically established facts regarding domestic violence.

This guide:

- Provides a primer in empiricism so attorneys will gain a fundamental understanding of it.

- Presents a method which assesses DV "experts" for empirical KSE's and their knowledge of the breadth of the domestic violence research literature.

For illustrative purposes the empirical KSE's of a top DV "expert" who has testified in many trials are analyzed. Doing this illuminates vulnerabilities that can be exploited during questioning. Additionally, several of her claims about DV are subjected to empirical scrutiny. Finally, a scenario derived from real cases is provided in order to demonstrate how the strategies and methods of this guide can be deployed together.

FEMINISM DEFINED

It is important for an attorney who intends to depose a DV "expert" to understand the larger context of legal and judicial belief about domestic violence. It is centered in feminist dogma (and as well be shown) not scientific fact. <u>Feminism, as it is used herein, refers to a set of beliefs and practices that are pro-female and anti-male</u>.

To learn more about the influence of feminist dogma upon judicial practice, attorneys are encouraged to read *The Judicial War On Men* (Nelson, 2020, available at <u>https://dvfacts.com</u>). In that book:

- Hundreds of sources are quoted in order to demonstrate the anti-male sentiment of feminism.

- Analysis of training materials obtained from the Judicial Council of California show the feminist explanation of DV is repeatedly taught to judges across a variety of classes.

- Official data also reveals for the same set of facts judges are two to six times more likely to rule in favor of a female and against a male.

I would prefer to address mistaken claims about DV made by "experts" without having to address feminism by name; however, this isn't possible to do. Feminism has planted its flag squarely in the middle of the topic of domestic violence.

If the operational definition of feminism was the advocacy of women's rights based upon equality between the sexes then I would be feminist.

SCENARIO BACKGROUND

Three weeks ago Carlos Johnson, who was *pro per* at the time, served his ex-girlfriend Kara Nguyen with papers seeking custody of their only child, a three month old baby named "Roberto".[8] Eight days after being served Ms. Nguyen filed for a "domestic violence" restraining order (DVRO) against Mr. Johnson. She was assisted by an attorney funded by a local women's shelter. A police officer served a temporary DVRO on Mr. Johnson at work. Two days before the noticed hearing Mr. Johnson retained your services. At the hearing your request for a trial in 60 days was granted. You begin discovery including a subpoena to the police department for reports and body camera recordings.

A week later Ms. Nguyen's attorney subpoenas Mona Piedro as their domestic violence expert witness. Ms. Piedro is the manager of the women's shelter that is paying for Ms. Nguyen's "pro bono" attorney.[9] Ms. Piedro has not written a report or submitted a declaration. It appears she will only be used for testimony at the upcoming trial.

From her *curriculum vitae* (CV) you learn Ms. Pietro has a Masters of Arts degree in Family therapy. She has been employed by the women's shelter for 11 years. She started as an intake worker and advocate. Seven years later she was promoted to manager. Ms. Piedro has a certificates in "Trauma-Informed DV Advocacy", "Trauma-Informed Legal Advocacy", "Domestic Violence Advocate Training", "Mandated Reporting", and "Danger Assessment."

You have not encountered Ms. Pietro before. A colleague lets you come to her office to read a trial transcript from another case where Ms. Pietro testified. You learn Ms. Pietro has testified in "about 20" family law and criminal cases in the last six years. In the

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[8] Mr. Johnson's case documents were written with the assistance of a volunteer attorney at the low income legal clinic at the local law library.

[9] A check of the shelter's website reveals they receive $460,000 per year from state and federal battered women legal assistance grants to fund, among other things, no cost attorneys.

transcript Ms. Piedro testifies to 13 general facts about DV. These are summarized below (numbering added):

1. Generally, women are not violent against men unless it is in self defense while being battered.

2. In the typical heterosexual domestic violence situation the man is the abuser and the woman is the victim.

3. The number of reported and unreported cases of women being battered by men is extremely high.

4. Women are at risk of being killed when they separate from a male partner.

5. Typically, men are not victims of DV.

6. Bilateral, non-self defensive mutual combat between male and female partners is rare.

7. Fifty two (52) week DV treatment programs reduce the chances a man will batter again in the future.

8. Domestic violence escalates over time, first verbal, then pushing, then hitting, then sometimes killing.

9. Domestic violence isn't an anger issue. It is about a man seeking power and control over his female victim.

10. Domestic violence includes psychological abuse meant to exert power and control over the partner.

11. The "Cycle of Violence" model predicts that violence is repetitive once it has begun.

12. Abuse and violence are not the goal of DV. The goal is to obtain power and control.

13. The Power & Control wheel explains the specific acts of DV alleged in the present case.

QUIZ

1. How many of the 13 claims about DV are scientifically proven to be true?

2. Would you take Ms. Piedro's deposition? Why?

3. If you depose Ms. Piedro what will your goals be? What type of record will you try to create? What questions will you ask?

4. If the transcript elicits admissions by Ms. Piedro that she lacks empirical training and does not know how to evaluate

research publications in order to determine if they are empirically trustworthy or not, how will you use this admission? Will you have it evaluated by an expert?

5. How will you put all this together in a motion to disqualify the witness from being admitted as a DV expert?

You might be surprised to learn none of the first eight claims have been proven true and the first seven have been proven false. There is no definitive proof one way or the other for the eighth claim. The last five are unproven feminist dogma.

QUIZ (cont.)

6. Suppose Ms. Pietro came to the deposition prepared for your empirical challenges and is able to cite supportive substantiation for all 13 claims. How would you determine if the substantiation she cites is empirically valid, or not?

You have another problem. Generally speaking the judiciary is steeped in feminist dogma, particularly in left-leaning states like California, Oregon, Washington, New Jersey and New York. It appears many jurists have accepted the feminist explanation of DV as true. Two examples are provided below.

The first is from a video recorded interview with U.S. Supreme Court Associate Justice Sonia Sotomayor.[10]

EVA LONGORIA	Do you consider yourself a feminist?
JUSTICE SONIA SOTOMAYOR	Yes.

The second is from cross-examination of DV "expert" Nancy Lemon in *State Bar of California v. IK* (Case No. 17-C-xxxxx).[11]

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[10] See the Jan 26 2013 interview of Justice Sotomayor by Eva Longoria, which can be found on youtube and other video downloading services. One location at the time of this writing is: https://www.youtube.com/ watch?v=Nflkx80uN-o.

[11] Questioning of Nancy Lemon on July 25, 2019, *State Bar of California v. IK* (17-C-xxxxx) at IV-86 & 87, in part.

DEFENSE COUNSEL MARC E. ANGELUCCI	Do you consider yourself a feminist?
STATE BAR PROSECUTOR JOHNNA SACK	Objection, relevance.
STATE BAR JUDGE LUCY M. ARMENDARIZ	Overruled. And, for the record, I consider myself a feminist.
NANCY LEMON	Yes.

   Compounding the problem of feminist judges, justices and prosecutors (and defense attorneys) is the fact that as holders of the *juris doctorate* (J.D.) degree none of them posses the empirical knowledge, skills and experience needed to distinguish between reliable empirical facts, those derived from deeply flawed studies and those which are only dogma, belief or opinion.   When you challenge a DV "expert" you will be challenging the beliefs of the judiciary regarding domestic violence as well.

   Complicating matters is the possibility the judge in your case has previously admitted your opponent's DV expert in prior cases; thus, the judge has a "buy in" for this witness. Consequently your petition to disqualify must be overwhelmingly supported. Even then the judge may balk from fear of making a decision that will generate pushback from peers, attorneys and activists. *Sometimes judges issue rulings they know will be reversed on appeal, doing so to mitigate damage to their career and relationships.*[12] Consequently, from the outset you should craft your motion to disqualify with an appeal in mind.

THE SOLUTION

   This guide presents a two part solution to the problem. The first should always be used. It is a deposition method meant to elicit admissions and statements that demonstrate the individual's level of empirical KSE's and their knowledge of the academic literature regarding DV. The optional second step is to have me evaluate the responses and *curriculum vitae* (*c.v.*) of the deponent. I can write a

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[12] See the "Persky Effect" described in Nelson (2020), *supra*, at chapter six.

report indicating whether their *c.v.* shows evidence of empirical training--or not--and classifying the individual as:

1. Demonstrating adequate empirical skills.

2. Demonstrating some empirical skills.

3. Demonstrating a lack of empirical skill.

CHAPTER TWO

How Empirical Knowledge, Skills & Abilities Are Acquired

AND

What Most Holders Of Advanced Degrees--Including J.D.'s--Don't Know About Empirical Science

Bad science can result in costly, ineffective and even harmful national policies (Soumerai & Koppel) [13]

Many researchers choose the instrument and set the conditions in an effort to prove their premises (Daniel Tanner) [14]

Error is common in scientific practice... [it can occur] at many steps of scientific investigation, inference or communal discourse (Douglas Alchin) [15]

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[13] Stephen Soumerai & and Ross Koppel, *How Bad Science Can Lead To Bad Science Journalism -- And Bad Policy*, The Washington Post (June 7, 2017).

[14] Daniel Tanner, *The Social Consequences Of Bad Research*, 79 The Phi Delta Kappan 5, at 38-39 (1998).

[15] This article gives an interesting overview of error across disciplines. Douglas Alchin, *Error Types*, 9 Persp. on Sci. 38, at 39 (2001).

All scientists have a responsibility to understand research methods, conduct the best research they can, and publish honest and unbiased results (Clark & Mulligan) [16]

Bad statistics makes bad research. Bad research may lead to bad medicine, and bad medicine may cost lives... bad research is at best a waste of effort and at worst a hazard to patients (Bland & Altman) [17]

Goals of the Chapter:

1. Explain how empirical skills are learned.

2. Identify, by degree type, graduate programs that do not teach empirical skills.

3. Provide the *Empirical Capabilities Assessment Test - Modified* (ECAT-MFA) for use by attorneys according to the license specified in the frontal matter of this deposition guide.

The graduate degrees listed below do not provide empirical training, or at most only provide small amounts as part of their curriculum of study; thus, holders of these degrees lack empirical knowledge to distinguish between well done empirical studies and badly done "research":

J.D.	DVM
MFT	M.D.
MSW	D.O.
MPH	Psy.D.
Ed.D.	Nearly all M.A.& M.S. programs
D.C.	Most Ph.D. programs

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[16] Glenn T. Clark & Roseann Mulligan, *Fifteen Common Mistakes Encountered In Clinical Research*, 55 J. Prosthodontic Research 1, at 1-6 (2011).

[17] J. Martin Bland & Douglas G. Altman, *Misleading Statistics: Errors On Textbooks, Software And Manuals*, 17 Int'l J. Epidemiology 2, 245, at 245-247 (1988).

Many holders of the Ph.D. degree lack empirical KSA's as well. (More than once it has erroneously been said, "I have a Ph.D.-- I know how to research.") Ph.D.'s earned from a night school, or online, or in qualitative or mixed methods programs--even at top universities--all lack empirical training. How empirical training is gotten is explained further below. First we must understand what empiricism is.

WHAT IS EMPIRICISM?

Empirical knowledge is the understanding of a complex set of rules and mathematics used to create and conduct research that produces defensible and reliable results. Empirical studies accurately and sufficiently assess potential relationships between outcomes of interest and dozens of variables, doing so individually and in models, all of which can be replicated with good accuracy. Empirical knowledge assesses for collinearity and confounding variables, and makes rational arguments of cause. Empirical knowledge is the skill set used to assess the research and claims of others for scientific trustworthiness. Empirical scientists implement substantive safeguards to control personal agenda. Empirical researchers practice empirical humility, which means they are equally willing to accept the null or alternative hypothesis *regardless of personal belief*. Empirical scientists nest their work in broad and substantive review of the extant literature to include critically assessing flaws in the works of others and themselves.

HOW ARE BRAIN SURGERY SKILLS LEARNED?

After medical school new physicians complete a 6-7 year neurosurgical residency at a medical teaching hospital in order to learn to perform brain surgery. These are paid positions with benefits. Residents (as they are called) work long hours to learn and master their craft.

HOW ARE EMPIRICAL SKILLS LEARNED?

After baccalaureate studies are finished graduate students complete a 6-7 year program at a research university. Generally they are paid a salary along with free tuition and medical benefits. They work 20 hours a week teaching undergraduate courses or serving as a research assistant. They work an additional 30-60 hours per week on their research and dissertation.

The first two years of study are spent in coursework learning a mix of theory and research methods, and attending graduate seminars. Once weekly a half dozen graduate students meet with a professor for several hours. Generally one or two books and a half dozen journal articles must be mastered in advance. The professor asks hard questions and guides deep analysis, synthesis and discussion.

After two years of coursework a master's degree is awarded. Individuals who pass the matriculation examination (one or two days in length) advance to the status of doctoral student.   After a second chance those who don't pass are dismissed from the program.

During the next five years doctoral students conduct empirical research and write their dissertation. This is done under the supervision and guidance of their mentor and committee. Mentor meetings occur several times per month. Inevitably they end with the mentoring professor asking questions the doctoral student can't answer. Responses are due at the next meeting. One-on-one mentoring by well-known, highly skilled, highly published scholars is the primary way that empirical skills are learned.

Periodically mentors arrange for doctoral students to present their work to other professors or at annual meetings of their discipline. This provides the opportunity to get a wider variety of criticism and also to meet leading researchers in their field. Mentors sometimes include doctoral students in their own research. This can lead to co-authorship on publications in the mentor's area of research. Sometimes mentors arrange for doctoral students to serve on department or campus committees in order to gain administrative skills. As graduation approaches, mentors help their students seek employment as assistant professors at research universities.

SERIOUS RISK: MALPRACTICE OF THE UNQUALIFIED

As can be seen, it takes about the same number of years to become a brain surgeon or an empirical researcher. Just as holding an M.D. degree does not a brain surgeon make; so also, holding a graduate degree--even a Ph.D.--does not an empirical researcher make. *If someone has not learned empirical skills through a doctoral program as described above it is unlikely they understand empiricism. They are probably not capable of conducting empirical research nor do they have the KSA's to parse good research from bad*.

Unqualified practitioners pose a serious risk to safety. When an unqualified M.D. performs brain surgery (s)he may kill the patient.

Similarly, when an unqualified person conducts or interprets research--or provides expert testimony--people directly or indirectly affected by their work may be seriously harmed.

An epidemic of unqualified persons conducting bad research has exploded.[18] As one of my mentors at the University of California, Davis once told me, "Most research is crap." <u>Proof is in the testing</u>: *Most holders of advanced degrees cannot give more than a rudimentary description of empiricism* as demonstrated by a low score on the *Empirical Capability Assessment Tool - Modified For Attorneys* (ECAT-MFA). This test begins on the next page.

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[18] Eight reasons for this are provided in Nelson (2020), *supra*, at chapter eight.

INSTRUCTIONS

Ask these questions to the witness exactly as they are written. Do not modify the wording. Even if the witness does not respond to one or more questions, you should ask all 25 of them. For items that contain multiple questions within them, ask each question in sequence, pausing for responses after each is asked.

1. What factors regarding *sample size* would cause you to reject as unreliable a study you are reading?

2. What *participant selection methods* would cause you to reject as unreliable a study you are reading?

3. What *p-level* would cause you to reject as unreliable a study you are reading?

4. What *quantity and types of variables* would cause you to reject as unreliable a study you are reading?

5. What factors regarding *control variables* would cause you to reject as unreliable a study you are reading?

6. What sampling methods are likely to produce results that cannot be generalized?

7. Why is it important for a quantitative researcher to use a standardized instrument? What are several ways to standardize an instrument?

8. What is instrument error? How is instrumental error detected?

9. How does the relationship between mean and standard deviation give a view on the consistency of outcomes?

10. What is the relationship between p-level and types of error? What is Type 1 error? What is Type 2 error?

11. What is a spurious finding? What analytical methods can detect spurious findings? How do they do it?

12. What types of tests can measure whether a relationship exists between two or more variables and a specific outcome?

13. What conditions are necessary before cause can be argued?

14. What is intercoder reliability? How would you assess for intercoder reliability? How would you create a correction to manage significant differences in intercoder reliability?

15. What is attribution error? Please provide three examples of attribution error.

16. What type of error does a longitudinal study try to control? Describe how you would control for time related error in a longitudinal study. What is the minimum length of time you would use in a study in order to avoid the error associated with short interval studies?

17. Suppose a study assesses a half dozen independent variables, one outcome and presents interpreted percentage comparisons. How likely are you to trust the reported results? Why?

18. When you perceive experimenter bias in a publication what should you do?

19. What are key differences and similarities between ordinary least squares regression and logistic regression? Can propensity scores be regressed? (If yes) Which type of regression should be used and why?

20. How does regression modeling detect collinear variables?

21. What is confirmation bias?

22. If a research publication has a high level of certitude and makes little to no use of qualifiers or other practices of empirical humility, will you be skeptical as to the reliability of the findings? Why? What indicators would you assess when evaluating reliability of the results?

23. If 100 qualitative, interpretive research papers all agree on a position and two well designed and well done empirical studies falsify the position, which outcome will you accept and which will you reject? Why?

24. Suppose a study discards 15% of its findings as "outliers which are probably spurious." What concerns do you have with regard to the reliability of the results?

25. What is "dummy" data? How are dummy data constructed? What type of mathematical processes can dummy variables be used in?

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