Challenging Methodology, Bias, and Unsupported Conclusions Through Effective Expert Depositions

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1

1

Sam obtained his Ph.D. in School Psychology from the University of Utah and is licensed as a Psychologist and Certified School Psychologist in the State of Utah. He is also board certified as a Pediatric Neuropsychologist and listed in the Council for the National Register of Health Service Providers in Psychology. He is a Fellow of the American Psychological Association and the National Academy of Neuropsychology. Sam is an Adjunct Assistant Professor in the Department of Psychiatry at the University of Utah School of Medicine. He has authored, co-edited, or co-authored over 50 clinical and trade publications, three dozen chapters, nearly three dozen peer-reviewed scientific articles, and eight psychological and neuropsychological tests. He is in development for a behavioral assessment tool to evaluate DMDD. His clinical volume about DMDD was just published by Springer. Sam is the former Editor in Chief of the *Journal of Attention Disorders.* Since 1980, he has served as the Clinical Director of the Neurology, Learning, and Behavior Center in Salt Lake City, Utah.

2

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3

Goals

- Dismantle unsupported opinions.
- Identify advocacy disguised as science.
- Turn methodological flaws into persuasive testimony.
- Build themes for:
  - Daubert motions
  - Mediation
  - Trial

4

As a neuropsychologist, I will focus primarily on forensic expertise, including defense expert opinions, particularly regarding challenging methodology, bias, and unsupported conclusions through effective depositions.

However, these concepts and strategies are equally applicable to plaintiff or defense positions across all areas of forensic, clinical, medical, and psychological expert testimony and evaluation.

5

Defense neuropsychological opinions often sound scientific while resting on selective reasoning, unsupported assumptions, and methodological shortcuts.

This presentation focuses on exposing those weaknesses through disciplined cross-examination, strategic deposition themes, and reliability challenges that separate objective science from advocacy.

The goal is simple: force concessions that shift credibility, admissibility, and case value.

6

CLEAR Methodology

A Contextual, Longitudinal, Evidence-based Analysis of Real-world functioning."

That framing naturally reinforces:

•context over isolated scores,
•longitudinal analysis over one-time testing,
•evidence integration over selective interpretation,
•and functional reality over abstract psychometrics.

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CLEAR Approach

- This approach emphasizes a contextual, longitudinal, evidence-based analysis of real-world functioning rather than isolated psychometric interpretation.
- The deposition should require the expert to explain their complete methodology, including consideration of medical history, symptom progression, collateral information, behavioral observations, premorbid functioning, occupational demands, and functional decline over time.
- It should examine whether conclusions were based on integrated clinical reasoning or disproportionately driven by validity testing, generalized recovery assumptions, litigation skepticism, or selective interpretation of evidence.

8

CLEAR Approach

- The inquiry should expose methodological inconsistencies, confirmation bias, and exclusionary reasoning while reinforcing that reliable neuropsychological opinions require nuanced evaluation of temporal relationships, symptom trajectory, corroborating evidence, and real-world functional consequences.
- This framework prioritizes context over isolated scores, longitudinal analysis over one-time testing, evidence integration over selective interpretation, and functional reality over abstract psychometrics.

9

Shift the deposition away from isolated test scores and require the expert to explain their full methodology.

Question whether the expert considered medical history, symptom progression, collateral information, behavioral observations, and functional decline.

Establish that neuropsychological opinions require integrated clinical reasoning rather than mechanical reliance on psychometric findings or standalone validity indicators.

10

Question whether the expert relied primarily on validity testing, generalized recovery assumptions, or litigation skepticism instead of individualized clinical analysis.

Explore whether they evaluated the effects of pain, fatigue, medications, sleep disruption, psychiatric symptoms, neurological injury, or sensory overload. Emphasize that validity measures are probabilistic tools rather than definitive evidence of malingering or exaggeration

11

Highlight methodological inconsistency by asking whether the expert considers the testing reliable or unreliable.

If they claim scores cannot support impairment conclusions, question how the same data can reliably exclude causation or support exaggeration allegations.

Force the expert to reconcile inconsistent evidentiary standards and expose selective interpretation supporting predetermined conclusions.

12

Challenge reliance on generalized recovery literature by distinguishing between population averages and individual outcomes.

Ask whether the expert evaluated the patient's premorbid functioning, occupational demands, and baseline abilities.

Emphasize that high-functioning individuals may experience meaningful decline despite average standardized scores due to reduced efficiency, increased effort, slowed processing, and diminished cognitive endurance.

13

Focus the deposition on longitudinal functional decline rather than a single testing session.

Ask whether the expert reviewed evidence regarding employment changes, loss of independence, emotional functioning, daily activities, and interpersonal difficulties over time.

Establish that persistent dysfunction, corroborated by treating providers and collateral witnesses, cannot be dismissed solely because isolated test results appear inconsistent.

14

Probe for selective skepticism and confirmation bias by asking why certain objective findings, imaging results, or corroborating records were minimized or disregarded.

Question whether inconsistencies unfavorable to the plaintiff were emphasized while converging evidence supporting impairment was ignored.

Demonstrate how selective interpretation may reflect advocacy rather than balanced scientific analysis.

15

Examine whether the expert used an integrative or exclusionary methodology.

Ask whether they synthesized neuropsychological testing with medical records, collateral interviews, behavioral observations, premorbid history, and symptom chronology.

Highlight whether effort concerns and inconsistencies were adequately contextualized within chronic pain, trauma, psychiatric vulnerability, or neurological injury realities.

16

Reinforce that reliable neuropsychology requires contextual reasoning rather than rigid, binary conclusions.

Question whether the expert considered temporal relationships, baseline functioning, symptom trajectory, corroborating evidence, and real-world functional consequences.

Establish that causation opinions based solely on isolated psychometric findings may overlook the complexity required for scientifically reliable forensic analysis.

17

Core Daubert Theme

"The issue is not whether the expert used scientific words. The issue is whether the reasoning process itself was scientifically reliable."

18

Strong Neuropsychological Examination Exposes

- Unsupported assumptions
- Selective science
- Methodological shortcuts
- Advocacy masquerading as objectivity

19

Final Takeaway

- **Effective Depositions Force Concessions About:**
  - Limitations
  - Uncertainty
  - Alternative explanations
  - Absence of definitive proof
- **The Result Shifts**
  - Settlement posture
  - Admissibility rulings
  - Jury perception

20

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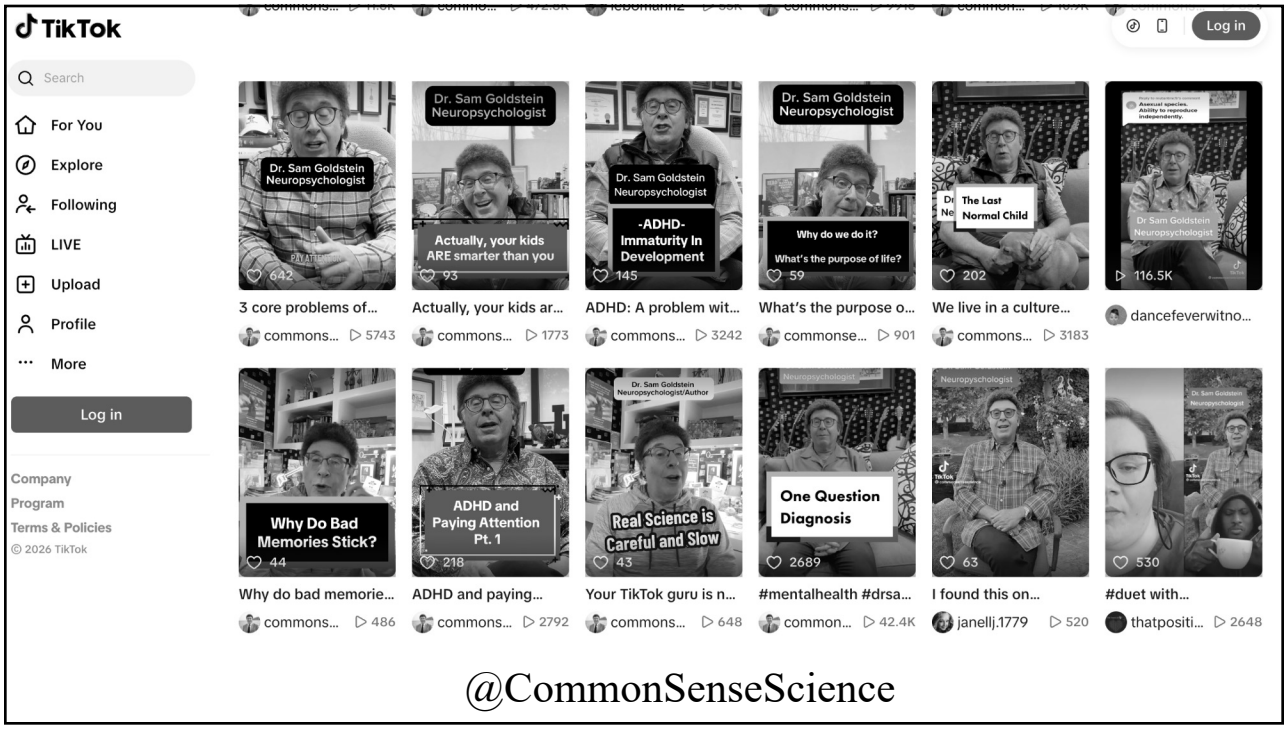
21



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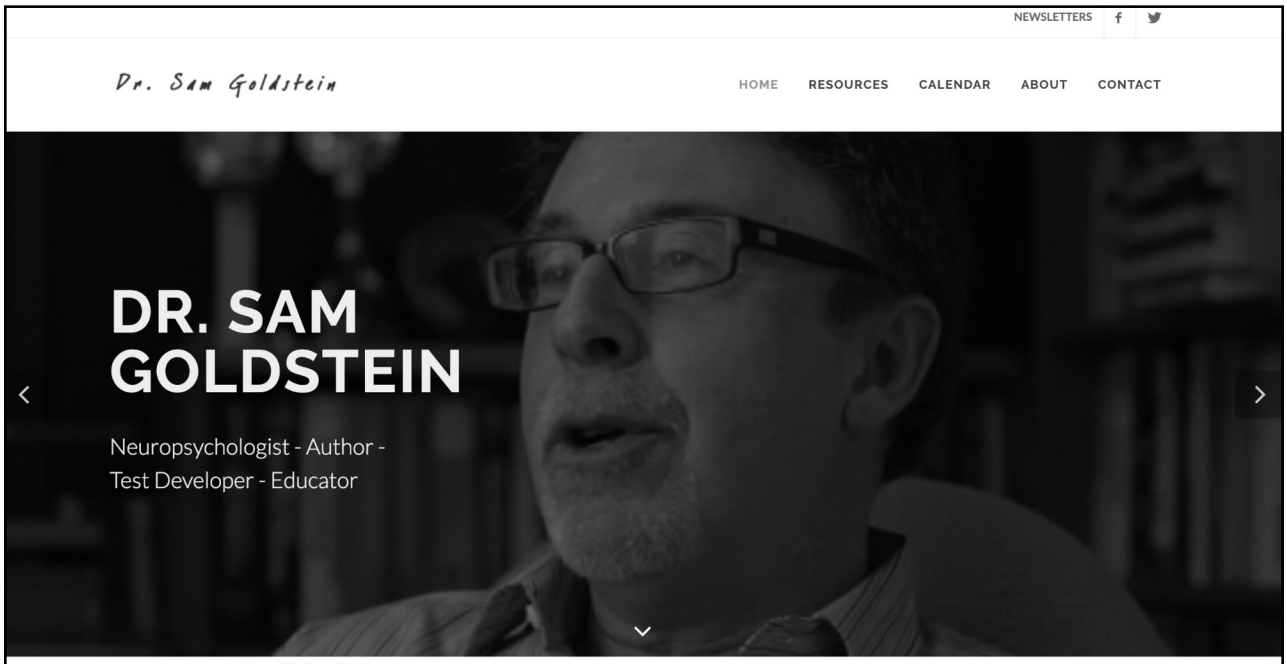

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23

Questions

24

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25