

# Challenging the Expert Mental Health Witness in Any Type of Litigation

Challenging mental health experts involves two key tasks: understanding the credentialing process so as to determine the *true* qualifications of your expert and understanding the core principles of mental health diagnosis and assessment. The former task is relatively easy to accomplish: there are books published on this subject (see below) and web-sites and articles also readily available (also see below).

## **Assessing the MHP's credentials**

It can be difficult to judge exactly the degree of expertise your expert witness actually possesses. With experts coming from a diversity of backgrounds, there unfortunately is no single criterion by which you can assess everyone. Moreover, there are plenty of spurious credentials out there, i.e. credentials which sound impressive but which in fact are little more than “vanity boards,” conferring their imprimatur on anyone who's willing to pay the fee. Forensic psychologists are bound by the Specialty Guidelines for Forensic Psychology. You can read these standards of practice here: <http://www.unl.edu/ap-ls/foren.pdf>.

With psychologists, at least, there is a way to determine whose credentials are truly more representative of bona fide training and experience. Check out this link: [http://www.xmission.com/~sgolding/publications/expert\\_voir\\_dire.htm](http://www.xmission.com/~sgolding/publications/expert_voir_dire.htm) Stephen Golding is a nationally-recognized forensic psychologist whose article on the voir dire of experts is right on point. Some of his tips apply to medical doctors as well. In general, the rule is to check out the criteria by which the organizations from which doctor is claiming expert status are awarded.

It's also a very good idea to read Dr. Stephen Golding's article titled “Voir Dire of Forensic Experts.” You can find in on the web here: [http://www.xmission.com/~sgolding/publications/expert\\_voir\\_dire.html](http://www.xmission.com/~sgolding/publications/expert_voir_dire.html)

## **Understanding Principles of Diagnosis and Treatment**

For a succinct description of some major points of the vulnerabilities of all mental health testimony, look at this URL: <http://www.uea.ac.uk/~wp276/lawyer.htm> The article refers to Dr. Terrence Campbell's article “Challenging Psychologists and Psychiatrists as Expert Witnesses” (reference in Footnote #1). In that article, Dr. Campbell states that one key problem is that any errors are hard to spot, owing to the highly technical nature of the testimony. One key flaw in all mental health testimony is this: the Court allows expert witness testimony on the premise that it is scientific knowledge, with all that term's assumptions of reliability and validity. Science,

by definition, is that field of inquiry whose data rests on information that is verified by replicable experiments. Yet the behavioral sciences are NOT “hard” sciences, i.e. they do not usually involve true experimentation. (There is, however, a branch of psychology that is truly experimental; however, those psychologists almost never are involved in forensic work.) One can easily see how the definition of “science” fits such fields as physics (if you drop something, gravity will pull it down towards the earth, every single time) or math (no matter how many times you add 2 plus 2, the answer is always 4). But there is very little in the “science” of human behavior that qualifies as true science. Thus, the vast majority of the time, the “evidence” being presented by the mental health practitioner is more reflective of society’s values and/or the expert’s opinion.. So then the question becomes “Is this information truly an *expert* opinion?”

The following book will vividly expose the inherent weaknesses of mental health testimony in an easily-understood, highly informative way:

Hagen, Margaret. (1997) Whores of the Court: The Fraud of Psychiatric Testimony and the Rape of American Justice Regan Books. New York.

As Booklist said in its review, “A take-no-prisoners condemnation of psychiatric experts being waved into the witness box, this account trashes psychiatry in general as a quack profession. Hagen (a psychology professor) assails most of the diagnostic tools of the field in her text, which roams among court cases whose outcome hinged on the testimony of mental-health experts. Her fundamental contention is that psychiatry is a junk science whose theories when extended to matters of legal culpability go against common sense.”

If you want a more technical, highly detailed approach, the classic books in this area have long been the Ziskin & Faust 3-volume series:

Ziskin, J. Coping with Psychiatric and Psychological Testimony 5<sup>th</sup> Edition. (1995 Law and Psychology Press. Los Angeles.

This 3-volume set is the gold standard on this subject. Ziskin explores the inherent problems in both data collection and interpretation of that data. He observes that the diagnostic categories themselves are controversial and questions their utility in a forensic context. Another author’s<sup>1</sup> survey of the literature lead to his conclusion that clinical judgments are very often flawed. Overall, said Campbell in that article, although the value of the MHP’s expert witness testimony is supposed to lie in his/her scientific expertise, very few of the MHP’s conclusions are based in real science. Like Hagen, he suggests that “a well-informed attorney can contend with (mental health testimony) via motions to limit or bar such testimony. Well-

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<sup>1</sup> Campbell, Terrence. (1992) Challenging Psychologists and Psychiatrists as Expert Witness. Michigan Bar Journal. January, 1992, p. 68-72.

prepared cross-examinations can so effectively support such motions that they demand favorable decisions.” (p. 71)

Zizkin & Faust’s work is, as stated, a three volume set. Here is the table of contents for each volume:

**Volume I:**

1. The Bases of Expert Testimony
2. Science & the Scientific Method
3. Challenging the Scientific Status of Psychology & Psychiatry
4. Challenging Principles and Systems of Classification
5. Challenging Clinical Judgment
6. Challenging Interviews and the Clinical Examination
7. Challenging the Results & Conclusions of Psychiatric and Psychological Evaluation
8. Challenging the Expert’s Experience
9. Challenging Credentials & Qualifications

**Volume II:**

10. Challenging Psychological Tests: Overview
11. Challenging Intellectual Testing
12. Challenging Personality Testing: “Objective” Methods
13. Challenging Personality Testing: Projective Methods
14. Challenging Computerized Testing & Interpretation
15. Neuropsychological (Brain Damage) Assessment
16. Challenging the Assessment of Special Groups
17. Challenging Recovered Memories
18. Challenging the Assessment of Malingering or Credibility
19. Challenging the Diagnosis of Schizophrenic Disorder, Thought Disorder and Depression
20. Challenging PTSD
21. Challenging the Eyewitness Expert
22. Challenging Prognosis and Treatment
23. Special Problems with Sexual Abuse Cases
24. Challenging Assessments of Dangerousness & Risk
25. Challenging Child Custody Testimony

**Volume III.**

1. Introduction
2. Making Use of Ethical Principles, Guidelines & Standards
3. Investigation
4. Analyzing the Clinician’s Report
5. Strategy & tactics
6. Dealing with Experts’ tactics
7. Depositions
8. Cross-Examination---Samples & Suggestions

9. Cross-Examination in Criminal Cases
10. Cross-Examination in Personal Injury Cases
11. Cross-Examination in Child Custody Cases
12. Motion to Bar or Limit Testimony
13. Responses to Criticisms of the 4<sup>th</sup> Edition
14. Trying Cases Visually

As Campbell points out, “the accuracy with which clinical judgment predicts future events is often little better than random chance.” (p. 68). He also contends that “preoccupied with signs of maladjustment, psychologists and psychiatrists disregard the strengths and re-sources of their patients, and as a result, they commonly overestimate the prevalence of psychopathology.” (p.69)

If you are challenging a child custody evaluation, read Dr. David Martindale’s essay (below). Dr. Martindale, a New York psychologist, is board-certified in forensic psychology and specializes in critiquing other psychologist’s evaluations. His article is on my website.

## **Understanding Psychological Principles and Procedures**

It is not possible, of course, to summarize in a few paragraphs what takes students years of study and practice to master. For an overview of psychological testing, read my article “[A Primer of Psychological Testing](#),” found elsewhere on this web page. To gain a global overview of diagnosis, read Terrence Campbell’s article on diagnostic clarification at: [www.camppsych.com](http://www.camppsych.com) . You’ll find it in the list of articles: look on the right side.

Then you may wish to expand your knowledge by reading my article, “[Neurotic, Psychotic or Just Plain Nuts?](#)” available on this website.

As stated, mental health diagnosis is a highly complex subject, and almost always, you will need to consult with a psychologist to truly understand the psychological nuances of your case. I offer free. 30-minute consultations and invite you to call me at (650)368-8318 so I can assist you more specifically.

## **Conclusion**

While there is clearly a great deal of valuable information that mental health professionals can offer the Courts, it is nevertheless also true that it is all too easy for MHPs to disguise their opinion or theory as hard, scientific fact. One of the principle emphases of cross examination should be to clearly differentiate between the two types of information, i.e. make sure that the expert’s findings are genuinely expert, that they adhere to scientific standards of reliability and validity. The extremely technical information that MHPs offer can make it hard to spot such deception (and

indeed, the expert almost certainly does not view it as being deceptive), and the services of another MHP to “decode” the data and suggest strategies for cross-examination may prove to be quite useful.