

Is Diagnosis Useless In Litigation?

That's pretty much the conclusion of psychologist Stuart Greenberg and attorney Daniel Shuman, who together wrote a provocative article on this subject for the International Journal of Law and Psychiatry. (Greenberg, S. and Shuman, D. [2004] Unmasking Forensic Diagnosis International Journal of Law and Psychiatry 27 (1) 1-15).

The authors, whose earlier article titled "The Irreconcilable Conflict Between Clinical and Forensic Roles" (Journal of Professional Psychology: Research and Practice, 28 (1) p. 50-7) is considered a seminal work in the forensic psychology field, contend that diagnosis is often more prejudicial than probative, that it is often inherently unreliable, encourages feigning of symptoms, and that mental health professionals better serve the courts when they focus on the litigant's *functional abilities* with respect to the litigation.

What is generally not known to the legal community is that DSM, the oft-quoted reference book of mental disorders, is comprised of diagnoses that were included by *consensus*, not by any empirical formulation. There is no test for, let's say, anti-social personality disorder the way there is a clear test for emphysema. As the authors state:

"While there is more consensus on these issues than ever before, psychiatric diagnoses in general provide less reliable information than well-established diagnoses in other fields of medicine. A diagnosis of colon cancer, for example, conveys far more dependable information about the pathology causing signs and symptoms that led to the diagnosis in the first place, how the disease is likely to progress, and how the diagnosis implies a treatment than would the diagnosis of Reactive Attachment Disorder (RAD). An RAD diagnosis conveys neither the necessary signs and symptoms, the original cause, nor reliable intervention. No psychiatric diagnosis—except those also claimed by neurology—conveys depend-

able information on all 3 of these points. In fact, some psychiatric diagnoses do not convey dependable information on any of these points.”

DSM, today in its 4th revision, is sometimes severely criticized as having been created out of compromise, not hard science, particularly with personality disorder diagnosis, can be challenged as being merely a reflection of cultural norms.

Moreover, many of the symptoms that define any diagnosis are *self-report symptoms*. The information regarding what symptoms constitute a specific diagnosis are easily researched, and are available for the litigant who wishes to embellish his case. Given a set of symptoms, the clinician provides a diagnosis, which is then presented to the court. However, what is not presented is the fact that the diagnosis was determined by the information provided by the litigant!

The case of Spencer v. General Electric Co. (688 F. Supp. 1072 [E.D. Va. 1988]) is on point here. This claimant reported experiencing trauma due to having been raped and was diagnosed as having PTSD, a diagnosis which was then used to prove that the events had in fact occurred. “The diagnosis may stand without reference to, or even in the face of, independently collected behavioral, historical or psychological test data. Hence, the jury may reasonably believe that they received an objective diagnosis made by the expert witness on the basis of scientifically collected data, whereas, in actuality, it may be a diagnosis made more by the victim than by the expert. Having been labeled with a diagnosis gives a veneer of objectivity to what may be nothing more than the claimant repeating her story to a clinician.” (Greenberg & Shuman, p. 7.)

Furthermore, stressful life events, which cause emotional upheaval in their own right, may mistakenly be seen as symptoms of a diagnosable mental disorder. It is very difficult, if not impossible, to tease these two things apart with any certainty. And if the litigant is given more than one diagnosis (a not un-

common event, since many symptoms apply to more than one diagnosis), the litigant is often seen by the jury as being even more harmed. The fact is, as Greenberg & Shuman succinctly state, "People with two diagnoses based on two different sets of unrelated symptoms may be more impaired than people with only one diagnosis, but people with two diagnoses based on one set of symptoms are not more impaired simply because their symptoms fit within two diagnostic categories." (p. 8)

What is potentially far more useful to the trier of fact than a diagnosis is an expert's assessment of any change in the litigant's *functional abilities*, i.e. in what way have the defendant's actions impacted the litigant's life? (Assuming they have at all, in the first place!) A diagnosis is irrelevant in answering this most basic question, and it is this question that the courts must have an answer in order to make a legal finding.