

Why Your Client's Therapist Is The ***Worst*** Expert Witness for Your Case

Sometimes an attorney may be tempted to call his/her client's psychotherapist to the stand, perhaps as a character witness or in an attempt to "prove" the client's mental health. Such a strategy can blow up, often with disastrous consequences! To understand why, one must understand something called the "therapeutic alliance." It is the very bedrock of successful psychotherapy: the therapist, in essence, becomes the client's ally, the one who can always see things from the client's perspective and is never judgmental about what the client does or says, no matter what it is. Over the weeks of treatment, the client gradually comes to trust the therapist as someone upon whom s/he can always depend. With the trust established, the client becomes freer to critically examine those parts of his/her life that are not working, that likely brought the client to treatment in the first place.

The most obvious reasons for not calling a therapist to the stand (as other than a fact witness) are based in the concept of the therapeutic alliance. Not only will it be disrupted (if not destroyed) by hearing the therapist testify, but the therapist is *by definition* a biased reporter, and one who has accepted as true everything s/he has been told by the client.

The roles of the treating therapist/psychologist and the psychologist/expert witness are quite different and completely incompatible. Stuart Greenberg, Ph.D., and Daniel Shuman, J.D., wrote a seminal article on this issue in 1997 titled "Irreconcilable Conflict Between Therapeutic and Forensic Roles." Their key points are summarized below:

➤ There are two potential witness roles for the psychologist: as an expert witness and as a fact witness. Not having been trained in legal concepts (e.g. rules of evidence, standard of proof, etc.), the treating clinician cannot evaluate the subject in a manner suitable for expert testimony.

- This latter is due to the inherent differences between the roles of the therapist and the forensic evaluator. While the therapist seeks to forge a clinical alliance with his patient in order to facilitate treatment, the evaluator must maintain objectivity and always consider potential manipulation (e.g. malingering) on the part of the client who is involved in a legal proceeding.
- The therapist maintains a confidential relationship with his patient, whereas the forensic psychologist is hired specifically to disclose his/her findings to the Court or the client's attorney.
- The client therefore has none of the protection that a traditional clinical relationship provides.
- The psychologist's patient is different in clinical vs. forensic roles. In the former, of course, it is the subject him/herself, but in the latter, it is the Court or the attorney. To whom the duty is owed thus also varies.
- While the clinician must be supportive and empathic, the forensic evaluator must, at all costs, maintain an impartial stance. The clinician's job is to help his patient; the forensic evaluator's job is to ferret out the objective truth as much as possible.
- The nature of the expertise of the two roles is different as well. The clinician is skilled in treatment, while the forensic evaluator has specific training in psycholegal questions.
- Each tests different hypotheses as well, the former seeking information that will lead to a diagnosis and then correct treatment, the latter attending to psycholegal criteria related to adjudication.
- While the clinician depends on information from the client to determine "reality" the forensic practitioner seeks data from multiple data points, including information from collateral sources (with whose perspective the client may or may not agree). The evaluator does not accept the client's perspective uncritically, an unheard-of perspective for the clinician.

- There is an increased level of structure in the forensic evaluation and the evaluator maintains more control over the relationship than does the clinician
- While the clinician works hard to be seen as positive and helpful by the client, the forensic evaluator's stance must be more distant and may become adversarial
- The evaluator is only concerned with presenting as accurate a picture of the client as possible to the Court. The clinician, on the other hand, is only concerned with benefiting the patient.
- In order to maintain the therapeutic alliance, the clinician strives to be as judgment-free as possible. The evaluator's entire relationship with the client, on the other hand, is directed towards judgment (evaluation).

Thus, using a treating therapist as an expert witness is fraught with peril. The treating doctor's testimony can easily be challenged on several fronts, most importantly, the treating clinician's unquestioning acceptance of whatever his/her patient told him/her, rather than the objective, fact-finding stance of the forensic psychologist.