

# “Crudely, without Any Finesse”: The Defendant Hears His Psychiatric Evaluation

Larry H. Strasburger, MD

**This paper examines the issue of potential harmful effects on an individual who hears a description of his psychodynamics in the highly charged, adversarial context of a courtroom. Ethical considerations and strategies for minimizing such harm are discussed, accompanied by illustrative clinical case material.**

A matter of importance to all forensic psychiatrists who testify in court is the question of whether the defendant should hear testimony about his psychodynamics, or, alternatively, should be asked to leave the courtroom during psychiatric testimony. The issue of the patient's right to confront and cross-examine witnesses against him or her and to assist in his own defense is complicated by potential harmful effects of hearing such testimony. A defendant who has raised psychiatric issues as a defense in the course of his or her trial must sit quietly, without opportunity to question or immediately rebut a minute description of his or her personal history and mental status. Hearing about the unconscious determinants, the wishes and fears motivating his behavior, may have substantial impact. The case ex-

ample that is presented here illustrates this point.

Some forensic psychiatrists, out of concern for these effects, have requested the exclusion of the subjects of their testimony from the courtroom. According to Tanay,<sup>1</sup> “The psychiatrist who conveys intellectual knowledge about a psychic condition to the sufferer through his testimony runs the risk of causing harm. Testimony can have the anti-therapeutic impact of a poorly timed interpretation. Being present at one's own psychic vivisection can lead to iatrogenic exacerbation or precipitation of psychopathology” (p. 409).

On the other hand, it might be argued that for a defendant to hear his or her psychiatric evaluation could be “therapeutic.” It could conceivably provide the defendant with a perspective on himself or herself that would provide relief from guilt and an opportunity to alter his or her behavior. A hypothesis could be formed that if behavior that led to difficulty with the law was unconsciously

---

Dr. Strasburger is a clinical instructor in psychiatry, Harvard Medical School, and associate attending psychiatrist, McLean Hospital, Boston, MA. Address reprint requests to Dr. Strasburger at 527 Concord Avenue, Belmont, MA 02178.

motivated, achieving conscious insight might interrupt that behavior to the relief of the defendant. The hypothesis is, of course, naive, in the absence of the therapeutic role of transference, resistance, and defense. In addition, the context of a courtroom, with its hostile associations of accusation and punishment, is far removed from the accepting atmosphere of the consulting room in which discoveries about the unconscious are usually assimilated.

The following case example demonstrates the effect on one defendant of hearing psychiatric testimony about himself during his trial. To explore this issue, a criminal defendant who had raised an insanity defense was seen in a follow-up interview. He was told that the interview was for research purposes and gave his permission provided that the material would be used in such a way that his name would not become public.

The defendant was a middle-aged married man who was tried and acquitted of willful failure to file an income tax return. During the course of the trial the defense had offered psychiatric testimony to the effect that the defendant had suffered significant losses of important personal relationships, diabetes, and a probable brainstem infarction, which had impaired his capacity to form specific intent to willfully fail to file his tax return. The author was called to testify for the prosecution to rebut the finding of the defense psychiatrist. The author testified that, although the defendant had suffered the losses of significant personal relationships through death and the vicissitudes of his business and al-

though he had suffered from diabetes and a stroke, these were not significant causal factors in his failure to file his tax return. The author went on to testify about the defendant's personal background and mental status and concluded that unconscious but psychodynamically significant factors had motivated him to fail to file his tax return. The testimony stated that the defendant was unaware of these factors and unaware of his motivation.

The defendant had been the oldest of four children who was raised in deprived circumstances. He was the one child who had risen from a blue collar background to achieve professional success. His parents had had a difficult marriage. His father was rarely home and not affectionate; he spent what little money there was maintaining girlfriends of his own. The defendant's mother was described as an intelligent but domineering woman who permitted little in the way of free expression by his children. The defendant was compliant with her wishes and aware of the hard life that she had. Although intelligent he was told that he could not go to college unless he did so at night because he was expected to help support the family after his graduation from high school. His negative feelings toward her were entirely suppressed.

Through diligence and hard work he managed to acquire a college degree in addition to supporting the family. Shortly after going into professional practice his business partner and only confidant suddenly died while they were engaged together in recreational sports. He became depressed after the man's

## The Defendant Hears His Psychiatric Evaluation

death and was unable to verbalize his feelings of having been deserted by his only friend. He said that outside of his wife he had no other close friends—"nobody to share secrets with or borrow money from." Together with his wife he lived what he considered to be an exemplary life. He was honest, faithful, and loyal both with his family and his clients. He contributed a substantial portion of his moderate income to charity and gave considerable time to projects that he considered socially worthy.

His mother died suddenly. He mourned her death but had little access at the time to feelings of dissatisfaction with the way that she had treated him. Within two weeks of her death he suffered the acute onset of diabetes mellitus. Two months later a medical evaluation disclosed that he had a "probable recent brainstem infarct." He filed for extensions of the deadline for his tax return, but for the next two years did not file tax returns. A further interview disclosed that the reaction formations against his angry impulses had broken down and that they had been displaced into the area of a stubborn response to the federal government. Because he could not be disloyal to his family or to his clients, instead, without being aware of it, he stubbornly refused to file his own tax return. He attempted to fight the impulses by having his wife lock him in a room on several occasions with pencil, paper, and tax information, but to no avail. He could not put pencil to paper. "I could do complex work for other people, but not my own. I'd just sit there and stare at it. I couldn't do it. I wish I knew what the reason was." He

recalled that a similar pattern had occurred after the death of his business partner after which he felt "completely rejected."

After his acquittal the defendant was invited to talk about his reactions to the trial in an interview. He stated that having to listen to the psychiatric testimony had a devastating effect upon him. "When you [the forensic psychiatrist] came I had the feeling I was on an operating table and you had a dissecting knife and you just opened me up wide for everybody to see." He said that it had been "frightening, positively frightening," and that he "just wanted to be dead; I didn't want to be in that room. I had a feeling that all by yourself you dug a hole, and very crudely, without any finesse, you threw me into that hole. You didn't even lay me in there gently. You took the side of your foot and kind of shoveled the dirt on top of me."

He stated that earlier in the trial he had gone to the men's room and discovered an open window there. "I looked out that window on the fifteenth floor and I saw all those little people there and I said 'How nice it would be just to fly away into eternity.' That only lasted for a moment and then I thought of my wife and my children and I said, 'I don't know how this is going to come out but I do know this is not a solution to the problem. It's a solution to me but not for my survivors.' So the moment came and went." However, later in the trial, during the prosecution's psychiatric testimony he stated that "that's when I thought you were digging this grave for me, putting me in it, covering it over. If they had declared a recess then I would

have gone to the men's room and jumped."

When asked how he had reacted to hearing about the way he dealt with unconscious negative feelings toward people he had been close to, he said, "I began to hold my breath and squeeze my wife's hand. I felt the blood level of my body go up to my head. I felt a lot of pressure and tension up there. I felt that if I were in that men's room with the open window I might have gone out of it. I felt like that was the end of my life."

Being forced to hear the unconscious material was a confrontation with the irrational in himself which made him feel out of control and "sick." When asked to further explore this reaction he said, "I always liked to believe I was responsible for my own actions. I always liked to believe that I had my thumb on the pulse of everything I was connected with or everything I had done. Here was something I had done without being in control of what I had done. I've always attempted to live my life in an honorable fashion. Something happened that I lost control. This is the one time in my own life. It was as though it had come to an end. It was hard for me to accept, something happened. . . . I got sick. Whatever I did, I did, I've never denied that. It just happened."

He then went on to deny that his inner feelings were in any way responsible for his actions. He expressed anger at the harshness with which he had been treated for what he saw as his one transgression in life. He projected his rage onto others with paranoid feelings that he had been "set up" either by his

former business partner or by the Internal Revenue Service. He felt that others had taken advantage of him.

He further expressed his resentment toward his interviewer but ended the interview with requests for the doctor's help with his problem of impotence and poor eyesight. He thus returned to a dependent position with the person with whom he was angry, mirroring his significant early childhood relationships.

The defendant at the end of his trial was clearly no wiser about his motivation than he had been before the trial. He learned nothing about his relationships with other people or about the role of his unconscious feelings in motivating his behavior. Making unconscious material conscious before he was ready to receive the information about himself was clearly not useful to him. His denial and projection continued after the trial. During the trial his immediate reaction to the removal of his psychological defenses had been rage and self-destruction manifested in the impulse to jump from the courthouse building. Having his inner world exposed in the context of the courtroom was not only not helpful, it stripped him of his defenses. This is consistent with Freud's warning against premature interpretations.<sup>2</sup>

Whether this experience would defeat subsequent therapeutic efforts must remain a matter of conjecture and a subject for future research. When a patient hears prematurely and in an unsupportive context the extent of his emotional problem, it is commonly thought to intensify resistance. This may be assumed particularly to be the case when the reporter is his own therapist. Certainly it

## The Defendant Hears His Psychiatric Evaluation

is common in civil cases such as malpractice or personal injury for an independent forensic psychiatrist to testify on behalf of an individual who is in treatment to protect the therapeutic process from intrusion.<sup>3</sup>

It is difficult to know in advance which subjects of psychiatric testimony may be vulnerable to such marked effects as illustrated in this case example. To some extent an evaluation of this potential will have to take into consideration the subject's psychological sophistication and his ability constructively to use intellectualization as well as his sensitivity to narcissistic injury. This might well be done in a pretrial conference with the psychiatrist when the material to be presented could be reviewed beforehand. The effects of such disclosure on the attorney's strategy should be minimal if pretrial legal discovery has been complete.

The clinician and court may view expert testimony as done "with finesse,"

yet the defendant may experience it as pain. Tact and consideration for the patient who is present in court are a clinician's responsibility, as a matter of course.<sup>4</sup> Additionally, in the light of this case it appears that a follow-up interview after psychiatric testimony might be valuable for defendants, giving them an opportunity to vent their feelings toward the "hostile" psychiatrist who testified against them. A kind of debriefing might be very useful in this setting to prevent further sequelae of lingering ill feelings from the trial.

### References

1. Tanay E: The expert witness as a teacher. *Bull Am Acad Psychiatry Law* 8:401-11, 1980.
2. Freud S: On beginning the treatment, in *Standard Edition of the Complete Psychological Works of Sigmund Freud*. Hogarth Press, London, 1958, vol 12, pp 139-44
3. Stone A: Sexual misconduct by psychiatrists: the ethical and clinical dilemma of confidentiality. *Am J Psychiatry* 140:195-7, 1982
4. Gutheil T, Applebaum P: *Clinical Handbook of Psychiatry and the Law*, McGraw-Hill, New York, 1982, p 364