

Paraforensic Aspects of Expert Witness Practice

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Work as a psychiatric expert witness poses many challenges, such as the need to sift through often extensive databases, the problem of avoiding personal bias and attorney pressures, the difficulty in reconciling psychiatry and law as two fundamentally different paradigms, the effort to link clinical conditions to legal criteria, and the stresses of withstanding grueling and intense personal attacks in the form of cross-examination on the stand.^{1–4} These challenges are universally recognized as so innate to forensic psychiatry that one cannot enter the field without accepting them as necessary burdens of the work.

However, there are aspects of expert witness work that, while less innate and central, are equally problematic and stressful, though they have garnered less attention in the literature. These might be termed the “paraforensic” aspects of the field: real-life, nontheoretical, and practical matters that are as much a part of the work as is achieving a grasp of the psychiatry-law interface. I will focus on the private practice of forensic psychiatry. Court clinics, institutions, and other settings pose different problems that will not be addressed here.

To define further the concept of “paraforensic” stressors, recall that a recent review of the stresses of forensic practice⁴ revealed that certain activities were regarded by forensic psychiatrists as particularly troublesome. The five leading stressors were: (1) fear of not being able to defend an opinion during cross-examination, (2) fear of the prospect of disclosure of one’s own content-related personal history, (3)

working with short deadlines, (4) testifying while physically ill, and (5) withstanding a retaining attorney’s attempt to coerce an opinion. Of this listing, testifying while ill and time pressures most closely fit the category of paraforensic problems; I consider the remainder to be intrinsic to forensic work generally.

In addition to the foregoing, paraforensic issues include the following topics considered below.

Feast or Famine

Unlike regular salaried employment, expert witness work knows no regular rhythm. Experts informally report common experiences of waiting for a case for many months, only to have five cases come within the same week. During those slow periods, experts may struggle with fantasies that they may never work again or that they have become *persona non grata* for some unknown reason.

Similarly, long periods may go by completely uninterrupted by urgent time requirements for depositions, report writing, or trial preparation, after which two different trials in widely separated geographic areas may require that the expert be present to give testimony within a three-day window. Such intense scheduling forces significant splitting of attention and loss of focus. This unpredictability also poses significant stress over and above the labor itself, such as time pressure to review materials. The unpredictability of forensic work is a powerful argument for keeping one’s day job.

Cash Flow

An obvious concomitant of the foregoing problem is the difficulty of maintaining a reliable flow of in-

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come. The day job, by offering a more reliable source of income, allows the expert to turn down a meritless case without feeling that he or she is sacrificing the children's college education.¹ Typical day jobs include salaried work at an institution, teaching duties, and private clinical psychiatric practice. Especially when starting out in this field, alternative income sources are essential.

One factor contributing to erratic cash flow is the irregular rhythm of cases noted earlier. Yet another is the reluctance of some attorneys to part with reasonable and earned expert fees. In addition to these problems are the cases where payment comes from an insurer who typically moves ponderously to honor an invoice, or from a state or federal agency whose budget may vary capriciously with legislative initiatives. The matter is even more complex and further delayed when an insurer is in receivership, as is, regrettably, not unheard of today.

Whenever possible, a retainer—perhaps even a replenishable retainer (one that the attorney is expected to refill before funds are depleted)—should be obtained in advance.¹

Attorney Problems

Despite the fact that most retaining attorneys are upstanding, there are problematic interactions and difficult persons in the legal profession, as in all fields.^{5,6}

Other problems in this area include the difficulties of getting some attorneys to return phone calls; to notify the expert sufficiently in advance about depositions and trials; or to notify the expert that the case was settled long ago, and the attorney has already forgotten it, while the case materials are still overflowing your storage cabinet.

Specific negotiation with attorneys is the central remedial effort here, as well as keeping track of cases and performing a periodic inquiry at regular intervals. Going over open case files just after New Year's, say, commonly reveals cases that have been settled or dismissed without the expert's being notified and an equal number of cases all too soon headed to deposition or trial. An adventitious telephone call may serve as a belated reminder for the attorney to let the expert know about it.

Travel Problems

Schedules that require air travel create stresses from jet lag, especially if the travel is on short notice.

Similarly, the stress of travel, especially to distant time zones, may lead to severe sleep disturbance and the consequent effects on memory and concentration.

In addition, travel necessarily competes with other life activities, including work and family commitments. A recent survey⁷ found very high variability among the family commitments that would lead an expert to forgo a forensic commitment such as a deposition or trial.

Some experts report practical remedies for this problem, including starting low-dose melatonin at the "new" expected bedtime several days before departure and then continuing its use in the new time zone. Others use an herbal pill called "No Jet Lag" available from travel catalogs. Still others recommend use of white-noise sound machines now available in many portable sizes. Many experts urge shunning benzodiazepines because of their erratic effects on memory.

Mental Tasks

Close juxtaposition of two different—or worse, similar—cases poses particular problems. The expert has to wipe out (forget? repress? dismiss?) the facts of the case just finished, shift the mind set, and bring a different set of facts to the forebrain, as it were—a marked challenge for even the most experienced expert. Data from a just-finished case may inadvertently "bleed into" the expert's recall, leading to confusion, apparent inaccuracy, and decreased credibility. (The significant datum of the suicide by a close blood relative: was that a neglected feature of today's suicide malpractice case or a similar case from the day before yesterday? Is this the case or was it last week's case with the individual who was suffering from significantly low blood pressure?)

The only viable approaches to this dilemma are to practice finished-case suppression and/or to make summary notes or outlines to aid in the differentiation of two similar cases.

Conclusion

Mastering forensic theory is a necessary but insufficient prerequisite to actual practice. There remain certain paraforensic aspects of the job performance that also require mastery. This editorial is an attempt to open this topic, suggest solutions, and invite reader commentary.

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