of David Menkes, M.D., Ph.D., taken by the State on October 23, 2003. *See* Exhibit "A," attached hereto.

3. During Dr. Menkes' deposition, those present, either in person or by telephone, were asked to identify themselves. *See* Exhibit "B," attached hereto, at 5-7 (excerpt of portion 2 of Dr. Menkes' deposition). The individuals who identified themselves or otherwise were identified at that time were Mrs. AA and Mrs. BB, counsel for the State, Mr. CC, counsel for the Defendant, the court reporter and the witness. Dr. XX failed to state his presence at that time or at any other time during Dr. Menkes' deposition, and the fact that he was listening on the telephone was not in any other manner disclosed to all parties to the telephonic deposition, including by counsel for the State.

4. Dr. XX was not entitled to attend and be present during the deposition of another witness in this case under State DD.R.Crim.P. 3.220(h) and R.Civ.P. 1.310. *See also, Palm Beach Newspapers, Inc. v. Burk,* 504 So.2d 378, 381-82 (State DD 1987) (criminal discovery depositions are not open to attendance by the public).

5. The surreptitious eavesdropping by Dr. XX on the deposition of Dr. Menkes violates §90.616, State DD. Stat. (2003), the rule of sequestration of witnesses, in that the rule provides for the exclusion of witnesses from hearing the testimony of other witnesses, on request of a party, except under circumstances not applicable to Dr. XX. Furthermore, the failure of the State and of Dr. XX to indicate his presence prevented counsel for the Defendant from invoking §90.616, State DD Stat. (2003), to exclude Dr. XX from applying to the Court for relief.

6. The surreptitious eavesdropping by Dr. XX during the deposition of Dr. Menkes was accomplished with his knowing involvement, the knowing involvement of the State and, as acknowledged by the State during proceedings before the Court on February 3, 2004, was affirmatively accomplished by the conduct of the State.

7. Such surreptitious, deceptive conduct and concealment further potentially implicates Rules 4-8.4(c) and (d) and 4-3.4 of the Rules Regulating the State DD Bar. The failure to disclose Dr. XX's eavesdropping served no purpose other than to deceive the Defendant, her counsel and the deponent.

8. By this motion, the Defendant further reasserts the grounds for the same relief asserted in Defendant's Motion in Limine to Preclude Testimony of XX, M.D., served on January 30, 2004.

WHEREFORE, the Defendant respectfully requests this Honorable Court to enter its Order in limine precluding the State from making reference in opening statement or closing argument to, or seeking admission in evidence of, any testimony of XX, M.D.

Respectfully submitted,
ATTORNEY FOR DEFENDANT

Implications

The judge's decision to deny the original[2] and this further motion *in limine* is puzzling, given the strong legal and ethical arguments to sanction the expert.[1–3] Although his reasons for allowing the expert's testimony are unknown, a contributing factor may have been the nature of the case, that of a high-profile double filicide. Considerable public and media interest in such a grisly scenario may have added to the momentum for a quick resolution.

In any event, the judge's decision not to sanction the deceitful expert devalues the role of expert testimony in this case and perhaps generally. In highly emotive cases such as this one, it could be argued that disinterested and ethical expert opinion is of particular importance in ensuring a fair trial.

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References

1. Gutheil TG: Letter. J Am Acad Psychiatry Law 34:569, 2006
2. Menkes DB: The silent expert. J Am Acad Psychiatry Law 34: 240–1, 2006
3. Candilis PJ, Martinez R: Commentary: the higher standards of aspirational ethics. J Am Acad Psychiatry Law 34:242–4, 2006

Editor:

The article "Mental Health Care In Juvenile Detention Facilities: A Review," by Desai et al.[1] was well written and timely, drawing attention to neglected clinical and forensic issues. In two sections, Psychotropic Medications, and Medication Management, the authors present an overview of existing limited national data regarding patterns of psychotropic medications use in juvenile detention facilities nationwide, and considerations for the continuation of and initiation of psychotropic medications for incarcerated juveniles. The authors did not mention a developing area for forensic psychiatrists—requests to render opinions regarding standards of care and practice in juvenile correctional facilities (i.e., suicide litigation, medical malpractice, class action/federal conditions of confinement litigation, or accepted standards of medical practice for state medical licensure and other regulatory/oversight matters).

The authors also did not report the accepted practice of reassessing recent psychotropic medication regimens, and when indicated, holding or discontinuing one or more psychotropic medications. Some examples of clinical situations to consider holding or not reinitiating one or more psychotropic medications include pregnancy in females, medication noncompliance, lack of youth assent/parental informed consent, recent substance abuse, and the