

Narcissistic Dimensions of Expert Witness Practice

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The authors review narcissism as it relates to expert witness practice. The review addresses stable versus unstable narcissism, normal confidence, perspective taking, the effect of flattery, the will to win, mirror transference, narcissistic excitement, narcissistic rage, narcissistic injury, and post-traumatic stress disorder (PTSD). The article closes with recommendations for resisting narcissistic pitfalls and achieving the egoless state.

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The expert witness is a hood ornament on the vehicle of litigation, not the engine. —Robert I. Simon [personal communication, 1997]

An expert testifying in court faces a number of external and internal stressors deriving from that experience: stresses of public speaking, withering cross-examination, internal anxiety and uncertainty, the need for preparedness, the pressure to think on one's feet, and so on. Among the internal stressors are elements of the dynamics of narcissism.

As the epigraph to this article suggests, humility is desirable, but the very nature of the courtroom experience poses stresses. The concept of “being the engine” that drives the courtroom procedure captures the expert's grandiosely wishful (but unfounded) fantasy of being in control of the process. Note also that the very term “expert” conveys a sense of specialness and of separation from the common herd, in terms of knowledge, skill, training, and experience.¹ The attorney's detailed eliciting of one's qualifications before testimony also may feed this image of the expert as an exceptional individual.

Familiar narcissistic fears—of exposure; of humiliation; of shame; and of being made to look foolish, incompetent, or unprepared—are emotions that keep many practitioners from venturing into court at all. Yet all these fears must be faced by the testifying expert.

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A tension appears to exist between stable narcissism (in the form of self-esteem, self-confidence, and realistic self-assessment of one's abilities) and fragile narcissism, which is dependent on external praise and validation, reinforcement, or idealization by others. The latter represents a significant biasing factor, which may lead the vulnerable expert to shape, slant, or distort testimony to win approval from the retaining attorney or to “win” at any cost.

In addition, experts who personalize the experience are in danger of narcissistic injury from aspects of cross-examination or when the decision of the fact-finder goes against the retaining side.

This review explores narcissistic aspects of expert witness practice. All vignettes were composed by the authors from actual or consulting experiences.

Normal Confidence

In normal development, a person may be described as moving from infantile self-involvement through self-esteem to a (preferably stable) self-concept (Goldwater RP, personal communication, 2004). Kohut² described how the later residue of infantile grandiosity is ordinary adult confidence. The average expert's development is likely to be no different.

The human trait of narcissism can be metaphorically likened to blood pressure: too much or too little is a problem, just enough—an average level—is just right. In more practical terms, a normal level of confidence or self-esteem is an element of the credibility with which the expert witness on the stand is viewed by juries and others.

Confidence by the expert is explicitly sought by attorneys:

A novice expert would glance nervously at his retaining attorney before answering a question on cross-examination. This made the expert seem lacking in confidence at best (or slavishly cued by the attorney as a “hired gun” at worst). The attorney cited this apparent lack of confidence as a basis for not accepting a subsequent referral to this expert.

The expert’s confidence in testifying, of course, is not only a product of internal dynamics but also a product of careful preparation and thought.

Developing Perspective

No matter which is the retaining side, the experienced expert can analyze both sides of the case with dispassion, rather than demonizing the opposing side to feel more righteous about his or her own work. Maintaining this balanced view aids the expert in avoiding excessive narcissistic investment in, or idealization of, his or her side of the case. An extreme opposite example is the expert who is never willing to admit being wrong about any aspect of the testimony, even factual matters.

This is a posture quite distinct from that of attorneys who can be intensely partisan without conflict. As an example, in the pretrial tribunal in a famous case, the defense attorneys kept referring to the plaintiff as “that asshole.”

Flattery

A cross-examining attorney puzzlingly brought out many obscure and marginal honors and achievements from the expert’s *curriculum vitae*. The expert was very flattered, until learning from the retaining attorney that this was a strategy designed to make the expert appear a “jack of all trades, master of none.”

In another example, after a grueling cross-examination, the opposing attorney’s female associate smiled at the expert when he left the stand. When her law firm sought to retain the expert in a later case, he told the associate how flattered and supported he had felt when she smiled. She indicated that she had merely enjoyed and had been amused by the shellacking the expert had just endured.

One of the most gratifying experiences for some experts is to be called by an attorney who worked for the opposing side to be retained for a subsequent case, as in the just-described example. Though flattering, such an event poses a threat of a kind of narcissistic seduction. “After all,” the expert is in danger of reasoning, “this attorney sought me out, after I had been on the opposing side. Therefore, surely he or she has a high opinion of me. I should try to do my

best for this attorney.” More overt and explicit flattery, of course, is not uncommon: “We came to you, Dr. Jones, because we think you are the best in the business.”

A recent discussion of flattery noted a similar point:

... [A]n expert may be flattered when an attorney asks her or him to become part of the trial team; however, joining such a team, and participating in the team’s us-versus-them mentality, may become a slippery slope for the expert. [The danger is that] [f]irst the expert advocates for her or his opinion, later the expert advocates for the team’s—that is, the attorney’s—opinion [Ref. 3, p 407].

The Will to Win

One of the most important goals for the expert is to achieve the professional detachment required to achieve the necessary objectivity and neutrality. Ideally, the expert reaches a Zen-like level of dispassion, so that the actual outcome of the case is a matter of complete indifference. Especially for the beginning expert, the “will to win” is a significant biasing narcissistic factor that impairs the neutrality of the opinion and creates an inappropriate investment in the case’s outcome.

Another way to envision the expert’s objectivity is to define the expert’s role as protecting the truth from both attorneys.⁴ The satisfaction the expert is fully entitled to enjoy from courtroom work is not derived from the outcome, but from the achievement of this goal; that is, the expert is satisfied that the opinion was successfully protected from distortion, misuse, subversion, and contamination by either attorney in the adversarial process.

Winning a case results from multiple factors, most of which (e.g., jury demographics, the nature of the case, the locale, and the demeanor of the attorneys) are entirely outside the expert’s control. As a result, the expert whose narcissism leads to the claim, “I won that case,” is demonstrating narcissistic grandiosity in most cases. Note that those same experts rarely admit, “I lost that case,” when the decision goes the other way.

Exhibitionism

Expert witness trial testimony is often performed in a kind of intense public focus that may be perceived as the limelight—a limelight that shines brighter for some when the cases are high-profile and widely publicized. Indeed, some experts seek out

high-profile cases and call the attorney, volunteering to serve.

A variation on this theme is the expert who displays style over substance, providing colorful, catchy, dramatic—but unsubstantiated—testimony. The image here is of the peacock's tail.

Mirror Transference and the Attorney

Identification and overidentification with the retaining attorney are recognized pitfalls of expert witness work.^{5,6} An expert may want, consciously or not, to curry favor, even with the opposing attorney, and may be tempted to give weak testimony to avoid offending the opposing side. Searching for love and admiration in this manner does not succeed; in litigation, “love” is a four-letter word.

The search for approval may produce a kind of mirror transference, as Kohut² described, manifested as a kind of mutual admiration society. Such a search may create a phenomenon described in sexual misconduct cases as the “magic bubble.” In sexual cases, the magic bubble begins as a sphere of mutual admiration containing super-patient and wonder-doctor,⁷ and ultimately becomes impervious to supervision, consultation, good judgment, and common sense.⁷ In the forensic equivalent, the magic bubble contains super-expert and wonder-lawyer and may become impervious to reality and the actual facts of the case.

Narcissistic Excitement

Under the stress of attack during cross-examination, a witness may succumb to a particular defense mechanism called narcissistic excitement. Compelled by competitive striving against the attorney, exhibitionist tendencies, and the adrenaline rush of combat, the witness may be drawn into a verbal fencing match at high levels of speed and energy, which may lose, distract, or alienate the jury:

A highly histrionic attorney was peppering an expert witness with rapid-fire questions on cross. The expert later recalled feeling at the time that this was a battle of wits based on speed and began to fire back responses. Viewing the videotape of that testimony later, the expert realized that the speed of response made the testimony seem pressured and defensive—and far less credible.

Recall that pausing to think about one's answer is not a failure of technique, nor should it damage self-esteem.

The same dynamics may lead an expert to enter into a combat stance, refusing to concede even valid

points to the cross-examining attorney—a posture that seriously impairs credibility. This resistance to conceding the obvious, refusing to “throw a position away” when that is the proper response, is one of the most common problems for the novice expert.

Narcissistic Rage

Every experienced expert expects cross-examination at trial, even a vigorous, aggressive, hostile, contemptuous, and demeaning cross. Experts also recognize these styles as theatrical ploys by the attorney to sway juries. However, a narcissistically vulnerable expert may take the attorney's attitude in cross more personally and as threatening to the self-esteem. Some experts fly into a narcissistic rage in such a situation⁸ and lose credibility by seeming to be personally invested (and thus biased or partisan) in the case. Since the expert's task is merely to protect the truth from both attorneys,⁴ a rage-filled reaction is never called for and always compromises one's objectivity.

Narcissistic Injury

Closely related to rage is the narcissistic injury some experts receive from actions of the legal system that they did not or could not influence.

A clinical practitioner serving for the first time as an expert witness testified truthfully, but was horrified to discover that the defendant received a very harsh sentence. This practitioner chose never to go to court again.

To enter into the legal system is usually to give up, to some extent, the narcissistic wish for control of circumstances, since different rules and procedures, unrelated to clinical reasoning or assumptions, now apply.

On the witness stand, narcissistic injury may result from the revelation of some defect in the expert's preparation, reasoning, and familiarity with relevant data or presentation. Given that everyone has areas of narcissistic vulnerability, every witness must face the possibility of narcissistic injury. The wounded expert who consequently becomes angry, provocative, combative, or defensive may lose credibility in the eyes of the jury or judge.

When the attorney is abusive in cross-examination, narcissistic injury can be averted or at least minimized by paying attention only to the content of the queries, not to the related aggressive or bombastic affect. This focus also preserves a more valuable writ-

ten record of the exchange. Recall that in the lasting transcript, the affect is not recorded, merely the stupid things one says when one flies into a rage. It may also be helpful to remind oneself that the attorney is merely honoring the ethical duty to represent the client zealously.

“Post-dramatic” Stress Disorder

One expert pointed to a forensic Cinderella phenomenon: that after the case is over, the expert becomes a pumpkin again. This image is intended to capture the letdown that can strike expert witnesses in the aftermath of trial testimony, when the tension, drama, and exercise of one’s skills (or failure to exercise them) in the courtroom have all run their course, and experts return to whatever reality they left when they entered the courtroom. Recall that relationships with attorneys can endure for years as cases drag through the system. Thus, a termination may also be a part of the letdown. While this letdown is expected and normal, it constitutes a narcissistic frustration of its own.

Recommendations

The expert whose narcissism is affected by all the above pressures faces the danger of becoming cynical about attorneys and the legal system. Such cynicism exposes the expert’s narcissistic views of the work instead of those that produce pleasure. The ideal embodiment of a witness free of narcissistic difficulties is the egoless expert who accepts that the task, not the person, is essential. As Steven King expressed it, “It is the tale, not he who tells it” (Ref. 9, p 460). This egoless state includes avoiding grandiosity, resisting the appeal of the limelight, avoiding taking personal credit for the outcome of a case, and avoiding gratuitously disparaging the opposing expert¹⁰ for one’s own narcissistically competitive motives.

Another way to express the challenge for the expert is adherence to forensic boundaries. This implies avoiding: straying beyond the parameters of one’s task; attempting to control the case’s outcome; inflating one’s resume; claiming greater expertise than one actually has; and, when testifying, claiming to know

with certainty those facts that are not knowable by a person who was not on the scene at the time.

The metaphor of the expert as a “hood ornament,” with which we began, should offer relief to the expert in removing some of the burden of the proceedings from his or her shoulders, as should the realization that, all too often, the experts on the two sides of a case merely cancel each other out, leaving the jury, as is so often true, to vote their viscera. More pragmatically, experts may play roles of greater or lesser import, depending on the nature of the case: less importance in a competence-to-stand-trial case, say, and more in a complex medical malpractice claim.

The expert always strives to teach the jury but should do so without pomposity or condescension, since those alienate the lay listener. Attention to the narcissistic pitfalls herein described may protect the expert from bias, influence, and loss of credibility, a protection resulting in improvement of the value of the task performed for the legal system.

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