

# Oral Performance, Identity, and Representation in Forensic Psychiatry

Ezra E. H. Griffith, MD, and Madelon Baranoski, PhD

The specialty of forensic psychiatry is advancing in practice and in its scholarship. One task for an evolving discipline is to define and master the nature of its work. In this article we assert that the work of testifying in court is more than the sharing of specialized knowledge. It is performance. Anthropology, religious studies, political science, and psychology (among other disciplines) have investigated elements of face-to-face human interaction set within ritual and credentialed it as worthy of attention and belief. Such is the nature of expert testimony within forensic psychiatry. This is our position, but we also consider well-founded concerns about the ethics of highlighting oral performance. These topics emphasize the need for the discipline to recognize the unique nature of testimony, to master the work and control standards that assure excellence and ethics-based practice.

*J Am Acad Psychiatry Law* 39:352–63, 2011

That we are performative is not to suggest that deceit governs what we do, only that we have no way of being apart from the stories and roles and words that we know.<sup>1</sup>

In a story titled, “Iphigenia in Forest Hills,”<sup>2</sup> Janet Malcolm relates the gripping account of a 2009 criminal trial that took place in a New York City courtroom. She takes pains to explicate the unfolding of the trial and to describe the participants and their roles both artistically and psychologically. In so doing, she introduces her readers to concepts of narrative, oral performance, and witnessing, as well as to other notions that are all relevant to understanding the procedures of the courtroom ritual. We suggest that these notions are emerging as essential parts of the forensic mental health professional’s vocabulary.

These matters have been considered before, in the claim that performative narrative has an important

role to play in any discussion about the written report of the forensic psychiatrist.<sup>3</sup> We return to them in the present discussion of the forensic practitioner’s oral performance, particularly in the context of the criminal court trial. But we expect that this discussion will be relevant to the forensic psychiatrist’s oral work in civil trials and other administrative hearings.

We emphasize that the forensic expert’s oral work is more than just the restatement in court of results gleaned from evaluations and observations; it is more than just the neutral presentation of information. Such a simple and plain conceptualization of our courtroom activity is a mistaken view of our collective mission. We think it is so because even the most humble among us seem to set about to be persuasive once we enter the courtroom. We want to have an impact, and so we wax eloquent and try to be convincing in what we say. It is this urge that stimulates us to make the turn toward performance and storytelling.

Cohen<sup>4</sup> and McGrath<sup>5</sup> have recently described an unusual training exercise for fellows at the World Economic Forum, which took place at Columbia University. The 50 fellows from 40 countries took courses on voice, breathing, rhetoric, and improvisation. Cohen<sup>4</sup> noted that the idea was to teach the fellows the techniques that actors employ to hold an audience’s attention. One of the principal mechanisms of the techniques discussed was the art of stage “presence”: how to take a stage and own it. The teachers helped the fellows to correct their habits of mumbling and swallowing words and to give up their

---

This article is based on the Isaac Ray Lecture delivered by Dr. Griffith at the 2010 Annual Meeting of the American Academy of Psychiatry and the Law. Dr. Griffith is Senior Research Scientist and Professor Emeritus of Psychiatry and of African-American Studies and Dr. Baranoski is Associate Professor of Psychiatry, Yale University School of Medicine, New Haven, CT. Address correspondence to: Ezra E. H. Griffith, MD, Department of Psychiatry, Yale University School of Medicine, 300 George Street, Suite 901, New Haven, CT 06511. E-mail: ezra.griffith@yale.edu.

Disclosures of financial or other potential conflicts of interest: The authors are involved in the editorial leadership of *The Journal*. However, they did not participate in any aspect of this article’s review and acceptance, which were managed by an ad hoc editor who is not a member of the Editorial Board. The authors acknowledge financial support from Connecticut’s Department of Mental Health and Addiction Services.

penchant for being introverted. As one professor of theater in the program stated, “. . . we’ve realized that the crucial medium is the human being who is delivering the message” (Ref. 5, p 20). He borrowed this concept from the discipline of communications in describing the theory of the medium and the message.

We are aware that some of our forensic colleagues insist that emphasizing performance means promoting distortion, exaggeration, untruth-telling, and so on. That is a misconception of our position. We think of performance as making something out of the mundane, making a to-do, creating a story out of several possibilities, making the story a coherent and understandable experience for those listening to it.<sup>6</sup> We are also claiming that our courtroom work has our identities attached to it. Furthermore, our identities are not some neutral elements that are devoid of meaning and have neither form nor substance. Our identities have meaning and value. After all, we represent in our work. This representation, at least from our collective view, has artistic and political value.

There is further complexity to these roles of identification and representation that we will seek to clarify, especially with respect to the task of witnessing. We are not referring here to the conventional task of being an expert witness or a fact witness in court. Instead, we are emphasizing considerations raised by Cavallo<sup>7</sup> in her depiction of the relationship between witnessing and the construction of narrative. The usual thought is that we, as expert witnesses, present the results of our forensic evaluations to the court so as to aid the participants in the judicial process to make sense of psychiatric and psychological data. However, as we do so, we should present our narrative view of the story; we should testify as witnesses to our views of meaning-making related to the data. In that way we become participants in the very stories we create, which complicates our work. Cavallo<sup>7</sup> also suggested that we consider to what extent we may be drawn into witnessing on behalf of someone who lacks representational voice in the court ritual. It is indeed curious that in the reference-point story mentioned in the beginning, the defendant was put on the witness stand. That, as we know, is not what usually happens in court. And in any case, defendants and plaintiffs often cannot speak for themselves about psychiatric matters that concern them, which in Cavallo’s framework, engenders silences that we must fill. The problem, of course, will be to appreci-

ate the pitfalls inherent in our trying to fill these empty spaces.

But why make the effort to underline these few details about “Iphigenia in Forest Hills”? We do so because we find this account a useful didactic framework for understanding the foundation of what forensic psychiatrists do in court. *The New Yorker* tale introduces us to the basic interactive tenets of oral performance and narrative. The journalist’s account of the trial demonstrates the framing of the story. Malcolm recounts the unfolding of this criminal trial. She terms the courtroom the theater of the trial and speaks of the witnesses and the other participants as occupying the stage. The author labels as spectators those with only the role of observing. After commenting on the storytelling of the lawyers, she notes that the trial is a contest between competing narratives. Malcolm even theorizes that at least one problem for the defendant was her own courtroom performance, which Malcolm critiques severely because the doctor had behaved as though the jury didn’t exist and had looked only at the lawyer interrogating her. But we know that this aspect of the defendant’s courtroom performance was not her only difficulty. She had had trouble presenting a story that would withstand the onslaught from the prosecutor. The didactic dimension is instructive here, and Malcolm implies that there are both technical and content aspects to the activity of courtroom performance.

In reading the summary of the trial,<sup>2</sup> we learn that the principal defendant is a 35-year-old physician accused of murdering her husband. Her co-defendant is a man charged with carrying out the killing on her behalf. We are told details such as that the doctor is “pretty and charming, if undernourished,” and she wears her hair up and appears in court outfitted in light-colored jackets and patterned long skirts.

Malcolm the narrator weaves her story from the oral testimonies presented in court. The defendant was born and raised in Uzbekistan, and, following her medical education there, she immigrated to the United States in 1997. After several years of post-graduate training, she obtained specialist certification and a license to practice medicine. According to the story, the doctor got married, in 2001, to an orthodontist and she gave birth to a daughter in early 2003. There was a separation, followed by two attempts at reconciliation, and a final separation in 2005. Then came a significant custody dispute over the child, with a final decision and appeal that both

went against the mother. Apparently many observers were stunned by the decision, as the child had lived all her young life with her devoted mother. The painful, heart-breaking transfer of custody had taken place six days before the murder, which occurred on October 28, 2007. The transfer, easily seen as every mother's nightmare, had become a reality.

Malcolm tells us that the prosecutor argued that the defendant's decision to kill her husband was as inevitable as Clytemnestra's decision to wreak vengeance on Agamemnon for the loss of their daughter Iphigenia. In other words, the prosecution saw the case as the narrative of a woman who, once wronged in this mythic way, set about to author a criminal plot of maternal vengeance.

The defendant's lawyer had his own view of things, however. And the narrator suggests that is precisely why he decided to put the defendant on the stand. This modest, sincere woman, a committed and devout physician, could not have mounted a barbarous plot to murder her estranged husband. Besides, what about those 91 telephone calls between her and the co-defendant in the few weeks preceding the marker event? The jury heard from the co-defendant that the calls were related to medical care—the co-defendant had been the doctor's patient. In addition, right after the two co-defendants had met, he deposited almost \$20,000 into several bank accounts. The defendant's attorney, according to the narrator, made a valiant effort to portray the doctor as an innocent mother and physician who could never have executed a plot leading to her husband's death.

But after six hours of deliberations, the jury returned verdicts of guilty of murder for both defendants. At the final sentencing, the judge seemed to accept fully the prosecution's version of the narrative. The narrator informs us that the judge told the defendant, ". . . you set out on a journey of revenge because the judge had the temerity to give the custody of your daughter to your estranged husband" (Ref. 2, p 61). And he sentenced her and her co-defendant to life imprisonment without parole.

From Malcolm's account, we grasp clearly that even the judge, as a member of the audience, participated in the unfolding of the narrative and pronounced his opinion of the story's effect. The judge does not accept the doctor's version of the meaning-making, despite her wearing long skirts and her attempts to demonstrate how she had overcome adver-

sity and established herself as an immigrant physician and sympathetic mother. Her performance did not carry the day and erase the view of her as vengeful. Malcolm implicitly reminds us that the circumstantial evidence of the telephone calls and the money deposited in bank accounts could not be persuasive without the context provided by the narrative.

## Background Ideas

What do our colleagues from political science, the law, and communications have to say about our tasks in court? We were surprised by the observations of Schubert and colleagues,<sup>8</sup> who suggested that the face-to-face interactions that characterize courtroom work (such as when lawyers face judges and presumably when expert witnesses face lawyers and the triers of fact) might very well be seen as a form of political behavior. Other political behaviors at the root of face-to-face dealings are seen when candidates face off in debates and when small groups meet. Yet, we have rarely heard colleagues describe our court appearances this way. But viewed from that angle, it is not difficult to see that our face-to-face appearances in court may be construed as attempts to exert political influence, to carry the day with our argument, or to have an impact on matters that interest the broader community.

Seen from that vantage point, Schubert and colleagues<sup>8</sup> argued that being persuasive and winning the debate was more important than contributing to the clarification of ideas in the debate. These authors also noted that oral testimony is observable and therefore subject to study. This could in turn lead to the possibility of improving our participation in the debate.

Johnson and colleagues<sup>9</sup> conducted a study addressing the influence of oral arguments on the decision-making of United States Supreme Court Justices and concluded that "what transpires at oral arguments affects justices' final votes on the merits . . ." (Ref. 9, p 111). In reaching these conclusions (confirmed earlier by Chief Justice John Roberts, Jr. in a 2004 lecture,<sup>10</sup> which he used to articulate the notion that oral argument matters), Johnson *et al.*<sup>9</sup> listed a number of factors they examined as potential influences on oral arguments. They considered the following: lawyers' experience at oral arguments before the court; lawyers' attendance at elite law schools; whether lawyers were members of university faculties; ideological compatibility between the law-

yers and judges; and quality of the lawyers' substantive arguments. We mention these factors only to distill points that might be useful in thinking about what could be applicable to characterizing the work of expert witnesses in their face-to-face court appearances.

Johnson and colleagues<sup>9</sup> found that certain factors of credibility affect the quality of oral argument: litigation experience, attendance at elite schools, and being an academic combined to increase a lawyer's credibility. But in addition, the quality of the lawyer's argumentation was also influential. Not particularly important was the lawyer's providing information to the justices in complex cases or the lawyer's apparent ideological leanings. These findings raise questions about whether the expert's role of clarifying difficult issues for a court through the provision of information is an essential function. What is clearly more important according to these authors is the credibility of the source providing the information and the quality of the presentation. In other words, the performative dimension seems to trump the informative aspect of the oral argument.

Mahe<sup>11</sup> has focused more narrowly on the notion that the use of expert witnesses is a proven and accepted way of making complex subjects more understandable to jurors, which at first blush seems to emphasize the informative dimension. However, Mahe relies on principles derived from the discipline of communications to articulate techniques for delivering the information, which then seems more performative. Mahe argues first that since jurors construct a story to make sense of the evidence that they hear in the trial, the expert should provide elements that are readily usable by the jury in the construction of their narrative of the events. This conceptualizing of the function of narrative was readily demonstrated in the criminal case mentioned in the introduction here, and we see it as a performative tool. Mahe<sup>11</sup> adds that he has anecdotal evidence from interviews of experienced expert witnesses that the credibility of an expert (through experience and integrity) heightens the believability of what an expert has to say.

Olive,<sup>12</sup> too, has made much of this narrative theme. In speaking particularly about postconviction capital representation, he notes that postconviction counsel must unsettle things and change what the case is about—that is to say, counsel must find that “the case is, in fact, about something else than what the previous decision-makers believed” (Ref. 12, p

993). Olive goes on to emphasize in his argument that this factual and truthful storytelling must be built meticulously on a record that has already been used by others to develop a story that has been certified as the truth. A part of Olive's point is that shifting the emphasis in the story can reconfigure the narrative, with the resultant outcome of changing its effect. We wish to say no more at this point about the significance of narrative in the expert's work. But we highlight its obvious importance in the expert's courtroom activity and note that Mahe and others have also noted its relevance and significance. However, we continue to remind ourselves that the narrative enterprise must adhere to ethics principles.<sup>3</sup>

Mahe<sup>11</sup> returned to the discipline of communications to present ideas that experts should find useful in the courtroom, particularly as these ideas have been buttressed by research. For example, he recommends the use of visual tools in presenting information to the court, especially since it has been demonstrated that users retain information better when it has been presented visually and orally instead of just orally. Apparently, after 72 hours, users retain six times more of a visual-oral demonstration than of an oral one. Mahe also suggests use of techniques such as video graphics, if the court allows it and the information to be presented lends itself to such media mechanisms, in addition to poster board exhibits, timelines, and text-based slides.

As we move to close this section of our analysis and reflect on some basic concepts emanating from our colleagues in political science, the law, and communications, the summary in Table 1 implies that what we do as mental health experts is both inherently informative and performative. These other disciplines suggest by extension that our work is predominantly performative, at least insofar as we may be interested in being persuasive with what we say. In addition, the more we become interested in telling stories, in deriving narratives to convey our view of what has happened in a criminal or civil context, the more we resort reflexively to mechanisms and techniques that will help us carry off the narrative.

## Theorizing About Oral Performance and Narrative

### Oral Performance

It is now time to return to one of the basic themes that we believe have influenced our conceptual re-



**Table 1** Main Ideas and Implications Derived From Certain Scholars

Authors	Observational Ideas	Implications
Schubert <i>et al.</i> <sup>8</sup>	Courtroom work is face-to-face interaction; a form of political behavior	Emphasis is on being persuasive and winning the debate Less important is clarification Oral testimony is observable and therefore deserves extensive study so that we learn to testify better
Johnson <i>et al.</i> <sup>9</sup> Roberts <sup>10</sup>	Oral arguments in the Supreme Court matter	Elite decision-makers can be influenced by those presenting arguments to them Quality of the oral argument and the credibility of the presenter determine impact/influence
Maher <sup>11</sup>	Notions derived from communications discipline	Develop a story for the jury Present the story orally and visually

flections about the forensic psychiatrist’s work in the courtroom. It is the idea that our oral courtroom activity is performance. In this, we have looked especially to scholarship from anthropology and religion even as we recognize that our excursions have been necessarily limited by the narrow parameters of our academic backgrounds and ensuing vision.

Our prolonged and consistent observations of both the written and oral work of forensic psychiatrists have led us to the conclusion that the experts rarely limit themselves to the reporting of observations and findings about clinical examinations and other data. In other words, our work is not simply informative. Whether the presentations are in written or oral form, they are meant to persuade audiences. That is why we were so struck by the relevance of the framework already mentioned that our appearances in court could be seen as political acts, born of an intent to persuade an audience about what we had to say and constructed with the idea that we were well aware that we were playing to an audience. Or alternatively, we were engaged in a debate and we wished to present our side persuasively.

In turning then to the anthropologists, we confront another framework that we consider helpful in thinking about our oral professional activity. As they see it, performance might well be an organizing principle in our courtroom work for two reasons.<sup>13</sup> We convey a sense of artistic action in what we do, as we dress up in dark suits and dresses and do our work using special language—the artistic action. And we do it in a performance situation involving us as performers, our unique art form of oral forensic psychiatry presentation, an audience, and the particularized setting of the court.

In introducing forensic psychiatrists to this notion that what we do may indeed be performative, we consider this oft-repeated concern that verbal perfor-

mance “represents a transformation of basic referential language” (Ref. 13, p 292). In other words, performance has the capacity to transform our serious language into something that is dubious and inherently dishonest. Bauman certainly recognizes this possibility as he raises distinctions between “normal” language and performance. But he insists that the idea that literal language is serious and normal, while performance suggests insinuation, joking, or distortion is an age-old conception that reflects bias. He puts some responsibility on the audience to force the performer to adhere to a certain level of communicative competence. In our current terms, we argue that our profession must take on the responsibility of keeping our oral performances within certain ethics-based professional limits (even while conceding that the ethics debates continue, and the limits are not yet perfectly and brightly defined). We remind our colleagues that the American Psychiatric Association’s Council on Psychiatry and Law<sup>14</sup> recommended almost two decades ago that the peer review of psychiatric testimony could be an intriguing mechanism for ameliorating our oral courtroom work. These ideas have been extended by the Committee on Peer Review of the American Academy of Psychiatry and the Law. But in any case, other natural mechanisms are present in the courtroom ritual to restrict our inclination to become enthusiastic and overstep the bounds of professional modesty. One such mechanism is the cross-examiner, who can certainly challenge what we say and expose our performance as incompetent.

However, the anthropologists state that even though the distinction between literal/serious language and performative language has its inherent problems, performative language as a cultural phenomenon still often lends itself to ready characterization. This is demonstrated in the list of some com-

**Table 2** A Universal List of Communicative Means Documented in Various Cultures and Used to Key Performance

Name of Technique	Explanatory Examples
Special formulae signaling performance	Conventional openings and closings
Special codes	Archaic or esoteric language reserved for the performance ritual
Figurative language	Metaphors
Special patterns of tempo, stress, pitch	Expert's manipulation of voice and technical mastery of the microphone and other electronic aids
Appeal to tradition	Reliance on images linked to psychiatry; appearance of being thoughtful, pensive

Adapted from Bauman R: Verbal art as performance (Ref. 13, p 295).

municative criteria documented in various cultures that we might usefully apply to our oral courtroom work. For example, in reviewing Table 2 and applying the framework to our courtroom work, we believe that the very taking of the courtroom oath to tell the truth signals the beginning of the performance. Thus, the ambience is transformed, from a milieu where ordinary discourse is taking place, into a context where oral exchanges are occurring before an audience. This scene-setting is reinforced by the provision of water to the expert, setting the microphone if there is one, and the usual introduction of the direct examining lawyer to the witness. The production continues as the expert describes his qualifications and uses language that suggests training and experience in behavioral health. And the performance unfolds as there is use of clinically based language, techniques of emphasis, and other mechanisms that derive from years of exposure to medicine and psychology. We point out here that the business of introducing the expert and his qualifications does not then just signal the beginning of the performance. It also serves in Day's view to accredit<sup>1</sup> the expert as a certain class of performer, thereby exerting an impact on the credibility of the performance.

As Bauman<sup>13</sup> points out, all of this is linked to the expert's attempt to bind the audience to him and ultimately to control the audience. The performative level of this work is clearly linked to the expert's skill in keeping the audience as attentive as possible. In so doing, of course, the expert reinforces the notion that this framework of communication is not mundane. It is performative.

Insights related to this potential power of the expert witness giving testimony to a court have been underlined through the extensive observations of one of us related to the major study of an indigenous religious group.<sup>15</sup> In that context, it is evident that the ministers set out to be performative and thereby to be persuasive. They set up each segment of their religious rituals with the overt intention of focusing the audience's attention on them, and the beautiful robes they wear facilitate the effort to attract the audience's interest. But perhaps the most striking finding in these observations is the courageous and resolute commitment of the ministers to constructing social structures in their rituals with themselves at the center. It suggests that in contrast, we should consider why we have traditionally been reticent about stepping out boldly and seeing our work as performative and ourselves as participants in the ritual of the courtroom trial.

### Narrative

Day<sup>1</sup> establishes the connection between performance and narrative by making the claim, almost casually, that life is storied. He observes that religious texts form and are made up of narratives (Ref. 1, p 217). Malcolm<sup>2</sup> makes a similar point, of course, about criminal trials and by extension about civil trials. These are all stories about human life waiting to be told, something that we cannot do in oral form without having voice. We take voice as we recount the narratives orally, and as Day points out, the entire framework of the ritual becomes credible to the degree that the stories we create are plausible and that members of the audience can locate themselves in the network of the performance—can understand the story and the meaning-making through the lens of their own culture and their experience. That is why the prosecutor invoked the story of Iphigenia and the plot of maternal vengeance, thereby suggesting a way of seeing how things unfolded and making the story credible and his legal work in the courtroom performative. In other words, the prosecutor found a way to describe a theme in the story that evokes a common cultural understanding or experience in the audience. Elsewhere, this mechanism has been termed labeling.<sup>3,16</sup>

But we should perhaps say more about the task of creating the narrative to be related in court. The construction of the story comes about from the collection of data pulled from examination of the defen-

dant in a criminal case (for example), interviews of collateral witnesses, police reports, medical reports, psychosocial data, and so on. This information has all been detailed in work about the preparation of written reports in forensic psychiatry.<sup>3</sup> But the forensic psychiatrist must then integrate the information and distill from it a coherent and credible story that represents the expert's view of meaning-making. In this context, the forensic experts use their extensive medical and clinical training as well as their experience to formulate their understanding, their version of what happened and what it all means.

In explicating the process as it is done for the written forensic report, it has been suggested that the expert's voice uniquely takes the stage symbolically and presents the expert's version of the story. The expert's voice in written form must be heard as separate from the voices of others (prosecutor, defense, victim, etc.) who are seeking to be heard and represented in the story. In the courtroom situation, the expert has to concentrate principally on making sure that the expert's voice is clear and authentic. Here, the voice is not an abstract concept. It is indeed a concrete matter, subject to all the intricate and complicated elements that influence how voice is used and how it translates meaning. Whether one speaks hurriedly or slowly, with or without tremor, rhythmically or not, with or without a regional accent, all add power and meaning to the spoken word. These elements may add significance and clarity to the use of voice and remind us of the traditional and aged techniques of rhetoric—learning how to breathe and, for example, to pitch one's voice in distinctly different ways, depending on one's intent and meaning-making. (Mackie<sup>17</sup> reminds us that the task of rhetoric is all about influencing public opinion.) These techniques of understanding and use of voice are even more important here, because in oral performance the expert does not control the testimonial voice to the extent possible in written performance.

Voice is also used adroitly to drive home the functions of the narrative, without seeming to do so purposefully. Among the functions articulated by Day,<sup>1</sup> we emphasize three. The expert's story-telling suggests a narrative that the audience imagines is a potentially reputable version of what could be true. The narrative offers an explanation that may reasonably inform about what transpired. And the narrative invites the audience to evaluate the story, to contem-

plate the implications of accepting the offered version of the story as truthful.

We believe that the Iphigenia trial reflects these ideas in a didactically useful fashion. We could imagine the defense's story to be a reputable version. But the physician-defendant, it appears, does not adequately explain the 91 telephone calls between her and the co-defendant over the few weeks preceding the husband's death. Neither do we have an explanation of the money deposited in the co-defendant's bank accounts. We could therefore reach the conclusion that the story lacks a certain coherence and credibility. We had also earlier mentioned the accrediting function of the performance narrative. In this case, the defendant as a fact witness lacks the accredited standing of the expert witness. Indeed, the defendant is caught up in the accusations and finds it hard to pose as a disinterested bystander.

We cannot leave voice disembodied, at least not in the context of oral performance. Anthropological commentary teaches us that.<sup>18</sup> Our studied observations of religious rituals<sup>15</sup> confirm this idea too. Consequently, we must recognize that scholars, artists, and others have long since appreciated the interactive performative effects of voice and body. The body by itself is an obvious performative tool, as seen in the context of mime, in the traditions of the silent movie, and certainly in the medium of dance. We know that it is possible to employ mime skills to present a character and even to present the character in a narrative context, which was likely the early basis of the silent era in cinema when images had to speak for themselves. And dancers tell stories all the time through their voiceless movements. What is of interest here is that when voice and body come together, the potential for effective performance displays is enhanced. Religious rituals demonstrate this readily: in the context of the usual sermon or homily; in the reading of scripture lessons; and even as a bishop stands, staff in one hand, beautiful chasuble draped over his shoulders, and his right arm uplifted as he pronounces his blessing of the congregation. (We note here parenthetically that recent developments in dance suggest, through the technique of having principal ballet dancers address the audience prior to the formal dance performance, that even purveyors of this art form are seeking some fusion of voice and body.<sup>19</sup>)

It is in recognizing this aspect of oral performance that forensic psychiatrists enter the courtroom (Table 3). At this point, when they make their entrance,

**Table 3** The Five Stages of Courtroom Performance by the Expert Witness

Stage I	Entrance into the courtroom with intent to be informative and performative
Stage II	Initiating the performance: act of accrediting through introduction; establishment of credentials and experience
Stage III	Direct examination: interactive exchanges to facilitate the telling of the expert witness's story—the narrative. Use of techniques to tell the story with voice and body; use of other visual aids
Stage IV	Cross examination: the process where the expert's story will be challenged and where the expert must work calmly to buttress the story—with techniques employed in the preceding stage
Stage V	Transitioning to the end: the direct examiner seeks to underline the major points of the expert's narrative and signals to the audience that the performance is coming to a close and the curtain will fall

Throughout, the performance will still be influenced by professional ethics, identity, and representation.

they must be confident of the story they wish to tell. They should have gone through the usual preparations with the lawyer who will conduct the direct examination, as it is this lawyer who will pose the questions that will frame the expert's use of voice. The expert may not just speak as though delivering a soliloquy. The lawyer sets the stage by framing the introduction of the expert and "accrediting" the expert, in Day's terms,<sup>1</sup> as an esteemed performer with something important to tell the audience. The lawyer will go on and pose other questions. The expert will weave his story through the delivery of his answers to the questions. But the expert will understand that at one point he may raise his voice in emphasis, just as he takes off his glasses and looks convincingly at someone in the audience. And he will do so in an effort to make a point persuasively. In that sense, the expert is consciously performative. Smith and Bace make the summary point that, "Practicing control and improving your voice and your ability to use gestures and facial expressions naturally and consistently are good investments if you want to be a credible expert witness" (Ref. 20, p 361). He will do all this with the ideas of Candilis<sup>21</sup> in mind—that the performance must be fettered by the constraints of professional ethics—even though it has not been determined yet what ethics-based framework best suits our courtroom activity. This conceptualization is depicted in Table 3.

### **Identity and Representation**

There are two additional elements that, in our view, play an important role in the forensic psychiatrist's performative activity in the courtroom. We shall call them identity and representation. We suggest that incorporating these elements formally into the conceptualization of our courtroom activities helps sharpen our skills and facilitates the melding of ethics principles with our performances.

Clarifying in our minds who we are and what we represent is an important step preparatory to the excursion into the performance. We maintain that coming to terms with those notions will influence, for example, how we dress in court. It may also determine how extensively performative we wish to be. Not everyone will embrace enthusiastically the idea of oral performance. Some observers will protest that they do not engage in any type of performance in court. They will likely state that they are physicians, professionals engaged in serious informative work in court, who wish to fulfill their duties in as neutral a fashion as possible. They have nothing to be persuasive about. We appreciate that these colleagues may not be disagreeing with us about oral performance. Rather, their differences with us may lie in their views of how they see themselves and their approaches to—and execution of—the work. This is a disagreement about identity and about how they go about representing themselves and their profession. Ultimately, there is nothing we can do about the circularity of our hypothesis: those who embrace performance and see in it a part of themselves and of their professional identities may more readily execute their verbal court activities performatively. We add, too, our view that even though these colleagues may eschew performance, the audience still expects them to be performative in court.

Identity is linked to the task of representation, in that part of resolving clearly who we are as professionals is related to the values that we have chosen to represent in our work. Pellegrino<sup>22</sup> discusses the image of the virtuous physician and elaborates characteristics that are essential and useful to the physician's success in doing his work well. For example, the physician who sees himself as standing for justice and fairness might represent these themes in approaching a particular forensic case. This is not to say that the expert represents these values only part of the time. But, when fairness and justice are especially relevant in the particular case, the expert may decide quite



reasonably to highlight those dimensions in the narrative that will be presented orally.

In an illustrative example, forensic professionals were engaged to carry out the evaluation of a young male from a minority group who was charged with the shooting of a police officer. There was evidence suggestive of an altercation that had taken place between victim and defendant, before the shooting. The experts wanted to make clear to the hiring attorneys what they stood for, what they represented in their work. They asked for a meeting to discuss with the attorneys certain principles that they sought to maintain in their work. The experts wanted to make clear that they wanted access to all the available evidence in the case and that they would not enter the case with bias against police officers or in favor of minority group members caught in conflict with the police, without having the data from their evaluation. The experts tried to articulate lucidly to those who would engage them that values of justice and fairness were important in their forensic work. In so doing, they intended to organize a narrative of events framed on a bedrock of data. The lawyers would determine in due course whether the story was helpful to their view of the case.

In this context, then, being conscious of the notions of identity and representation helps us in turn to structure the limits of our performance. The intent to be performative should not lead us to accept a script of the narrative created by lawyers from either side. Performance must not mean abandoning identity or representation.

Griffith<sup>23</sup> has made these concepts of identity and representation substantive elements in developing a line of argument about narrative ethics in the life of the forensic psychiatrist. We reemphasize the point here that the storied experiences we encounter in our lives help us to build a framework of who we are and what we wish to stand for in our work. And as we clarify this for ourselves, we then will bear witness in our work to our construction of the meaning-making. This takes us back to Cavallo<sup>7</sup> and the idea that we become participants in the very stories we create.

## Discussion

We are not suggesting that conceptualizing our courtroom work as performative is a totally novel idea. Indeed, we have found hints in the forensic psychiatry literature that the metaphor of performance was emerging, even though it never blossomed fully.

For example, almost two decades ago, Rappeport<sup>24</sup> characterized the act of testifying in court as anxiety-producing precisely because in testifying, the psychiatrist was front-stage center. Then, Rappeport outlined ways to reduce the anxiety and to do a good job. But in placing the expert witness at the center of the stage, Rappeport evoked performance. These hints emerge too in his advice to the psychiatrist: dress appropriately and professionally; be prepared; maintain eye contact with the judge or jury; function as teacher; and so on.

Rappeport actually made other suggestions that imply how he was developing his ideas, but without using a formal structure. He advised the psychiatrist, in preparing for court, to consider alternative explanations of the event. This advice comes without reference to the narrative terminology. Similarly, Rappeport emphasized that it is "important to dress appropriately to convey a professional image" (Ref. 24, p 311). And he made this exhortation without referring to our concept of professional identity. Of course, we believe that our interest in constructing a more formal framework makes it easier to teach the ideas to trainees. In addition, it also serves to facilitate research on the ideas, as we look to making the work of the forensic psychiatrist more evidence-based.

Limitations of space do not allow for the expansive treatment of the contributions authored by other scholars on the subject of courtroom testimony (see, for example: Chiswick<sup>25</sup>; Reid<sup>26</sup>; Melton and colleagues<sup>27</sup>; Conroy<sup>28</sup>; and Smith and Bace.<sup>20</sup>) Nevertheless, examination of their ideas reveals insights into the construct that we have been trying to put forth. For example, Melton and colleagues<sup>27</sup> take up the subject of the social psychology research on persuasive communications and inform us that credibility has three components: expertise, trustworthiness, and dynamism. Expertise involves the formal aspects of the witness's experience and training; trustworthiness refers to perceptions that the witness is honest; and dynamism explains features related to style and charisma. It appears to us that these authors once again approach the framework of the expert's work from another angle. They acknowledge the features that enhance a witness's persuasiveness but without stating clearly that performance is indeed a central feature of the work. They also discuss the idea that there is a theory of the case, a coherent notion that will guide the presentation of the expert's findings. The authors avoid the explicit use of the narrative

concept. We are not suggesting that their contribution is misguided. It is simply different in its conceptual basis. Determining the framework that is most useful should be an interesting research project. But we note with some emphasis that these authors strongly emphasize the ethics dimension of courtroom activity. They eschew “fabricated or contrived credentials or half-truths” and argue that trustworthiness is an especially important component of credibility (Ref. 27, p 531).

We remark with considerable interest that a full decade ago, Gutheil<sup>29</sup> made the following observation: “Freely understanding what happens in court requires understanding the importance of court proceedings as theater” (Ref. 29, p 140). Here, the linkage of theater to the concept of performance requires but a minor step, even though Gutheil does not overtly make the connection. But the association is obviously cemented when he later states his case more pointedly: “Whether the expert likes it or not, his or her dress, demeanor and body language may influence the decision maker’s view of the evidence presented by the expert, no matter how factually sound that evidence may be” (Ref. 29, p 140). This is as much of a hymn to oral performance as we could wish. He further advocates the use of visual aids and suggests employing illustrative metaphors and analogies that are a part of the juror’s experiences.

Gutheil<sup>29</sup> wisely points out the pitfalls that experts should avoid. As examples, he describes what he calls the minor and major crusades. The minor crusade refers to the expert’s decision to take a case personally and to win it at all costs. Gutheil justifiably suggests that this could reflect the expert’s overinvolvement with the case or overidentification with the attorneys or the issue at bar. In defining the major crusade as an occasion when the expert uses the case as an opportunity for political involvement or to advance a cause, he ultimately concludes that both forms of crusade are unacceptable biases of the expert’s objective role function.

We agree that this conclusion may well be justified in some cases. But we also point out the possibility that the crusades may emanate from a decision to be persuasive, once the narrative is carefully rooted in the facts of the case. This is to say that once the expert carries out the evaluation and frames the narrative carefully without stepping beyond the boundary established by the findings, then the expert may vigorously carry out the performance—and yes, engage in

full representation of the position he has taken. In this context, it is not unacceptable bias. Rather, it is an ethics-based embracing of the performative act.

We also acknowledge the extensive contributions of Resnick<sup>30,31</sup> in this domain of forensic psychiatry scholarship. He has discussed the expert’s qualifications, problems of credibility, style of speech and delivery, and areas of vulnerability and has made suggestions for coping with cross-examination. Particularly useful is the oft-repeated advice to avoid the appearance of immodesty, to be careful with one’s demeanor, and to be cognizant of the elements that contribute to persuasiveness. Resnick’s contributions have, of course, been memorialized in his lectures<sup>31</sup> to generations of forensic psychiatrists attending the forensic psychiatry review course at the Annual Meeting of the American Academy of Psychiatry and the Law. We hope that we have been successful in offering a framework that collegially extends the contributions of both Gutheil and Resnick, a framework that offers a slightly different angle for viewing their observations and contemplating their advice. Because it would take us too far afield, we have not considered other recent contributions in the forensic psychiatry literature (see, for example, Gutheil<sup>32</sup> and Sattar *et al.*<sup>33</sup>). We see them as related but not centrally relevant to our main argument.

Finally, we recognize that legal scholars and practitioners have eloquently expressed the critical role of ritual and relevance in the courtroom and provide guidance to forensic experts. Justice Abe Fortas, delivering the opinion of the United States Supreme Court in *Kent v. United States*, affirmed the power of ritual in legal proceedings: “. . . but there is no place in our system of law for reaching a result of such tremendous consequences without ceremony . . .” (Ref. 34, p 10). The forensic expert witness is part of that ceremony and performs a specific role in it. Justice Harry Blackmun in the landmark case, *Daubert v. Merrell Dow Pharmaceuticals, Inc.* clarified that role by emphasizing a federal rule of evidence that requires expert testimony to “assist the trier of fact to understand or determine a fact in issue” (Ref. 35, p 12). Through an expert’s performative delivery of narrative, the issues are clarified and the relevance of facts emerge. The law acknowledges that the legal process benefits from a story that gives coherence to a chaotic clutter of data. Supreme Court Justice Blackmun, however, serves notice to all experts that the same legal process that seeks to be informed also challenges the stories

and holds storytellers accountable: “Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence” (Ref. 36, p 13). Ultimately, only those narratives that are least biased, most substantiated, and best performed will prevail.

## Conclusions

In this essay, we have returned to our reflections about the work of forensic psychiatrists and other mental health professionals, this time in the context of the courtroom. We have tried to articulate the view that our activity is both informative and performative, drawing on observations culled from several other disciplines. While emphasizing our thesis that oral performance is a significant element in our conceptual schema, we have linked it to a foundation strengthened by the factors of professional identity and representation. We have also repeatedly insisted that oral performance must be contemplated in the context of a vibrant respect for the ethics we judge applicable to our work. We argue that our thesis should be useful in the task of teaching our activities to trainees and in catalyzing scholarly efforts to evaluate what we do in court. We expect that academic psychiatrists will eventually be attracted by the interest other disciplines have shown in this phenomenon of performance. Joseph Roach,<sup>37</sup> a professor of Theater, African American Studies, and English at Yale University, reminded us in a recent lecture that many questions remain about performance. Why are some people magnetic, captivating, and able to be charismatically attractive in their performative work? Why do some individuals possess the unusual mixture of strength and vulnerability that makes their performance unforgettable? And what is this mysterious element that Roach called “It,” which some forensic psychiatrists have and that enables them to stand out in court, as they give a performance characterized simultaneously by typicality (they remind you of someone you know) and strangeness (you’re convinced you’ve never seen them before)?

After many exchanges and discussions with colleagues about these ideas, we return to their repeated concern that advocating the serious consideration of oral performance can seem to be promoting theatrical distortion and dissembling. Other colleagues worry, too, that some experts may seize voice and turn it in the wrong direction. We concede that such

concerns have legitimacy. However, we point out at several junctures in this essay that carrying out performative work must be tempered by respect for ethics-based performance. In addition, dismissing the performative dimensions of our work because some colleagues may misuse the ideas is tantamount to agreeing to the view that we should make no further progress in our subspecialties. That is obviously not our position. We can only repeat our established view that performance in our work must be held in check by a strong respect for ethics.

## References

1. Day JM: Speaking of belief: language, performance, and narrative in the psychology of religion. *Int J Psychol Religion* 3(4):213–29, 1993
2. Malcolm J: Iphigenia in Forest Hills: anatomy of a murder trial. *The New Yorker*, May 3, 2010, pp 34–63
3. Griffith EEH, Stankovic A, Baranoski M: Conceptualizing the written forensic report as performative narrative. *J Am Acad Psychiatry Law* 38:32–42, 2010
4. Cohen P: Training for leading roles: economic fellows prepare for the global stage with theater classes. *The New York Times*. July 10, 2010, pp C1, C5
5. McGrath B: In training leaders-to-be. *The New Yorker*. August 2, 2010, p 20
6. Peterson E, Langellier KM: The performance turn in narrative studies. *Narrative Inquiry* 16(1):173–180, 2006
7. Cavallo S: Witness: the real, the unspeakable, and the construction of narrative. *J Midwest Mod Lang Assoc* 33:1–2, Autumn 2000–Winter 2001
8. Schubert JN, Peterson SA, Schubert G, *et al*: Observing supreme court oral argument: a biosocial approach. *Politics Life Sci* 11:35–51, 1992
9. Johnson TR, Wahlbeck PJ, Spriggs JF II: The influence of oral arguments on the U.S. Supreme Court. *American Political Science Review* 100:99–113, 2006
10. Robert JG Jr: Oral advocacy and the re-emergence of a Supreme Court bar. *J Sup Ct Hist* 30:68–81, 2005
11. Maher T: Communication strategies for experts. Available at: <http://wolftechnical.com/wolfgraphx/cvs/commstrategy.pdf>. Accessed September 4, 2010
12. Olive ME: Narrative works. *UMKC Law Rev* 77:993–1023, 2007
13. Bauman R: Verbal art as performance. *Am Anthropol* 77:290–311, 1995
14. American Psychiatric Association’s Council on Psychiatry and Law: Peer review of psychiatric expert testimony. *Bull Am Acad Psychiatry Law* 20:343–52, 1992
15. Griffith EEH: *Ye Shall Dream: Patriarch Granville Williams and the Barbados Spiritual Baptists*. Jamaica, West Indies: University of the West Indies Press, 2010
16. Grunebaum-Ralph H: Re-placing pasts, forgetting presents: narrative, place, and memory in the time of the Truth and Reconciliation Commission. *Res Afr Literat* 32:198–212, 2001
17. Mackie CJ, ed: *Oral Performance and its Context*. Leiden, The Netherlands: Brill, 2004
18. Scheub H: Body and image in oral narrative performance. *New Lit Hist* 8:345–67, 1977
19. Wakin DJ: Ballerinas, famed for silence, take new approach: talking. *The New York Times*. September 17, 2010, pp A1, A22

20. Smith FC, Bace RG: *A Guide to Forensic Testimony: The Art and Practice of Presenting Testimony as an Expert Technical Witness*. Boston: Addison-Wesley, 2003
21. Candilis PJ: The place of narrative in the courtroom. Available at <http://litsite.alaska.edu/uaa/healing/candilis.html>. Accessed January 20, 2007
22. Pellegrino ED: The moral foundations of the patient physician relationship: the essence of medical ethics, in *Military Medical Ethics* (vol 1). Edited by Beam TE, Sparacino LR. Washington, DC: Office of the Surgeon General at TMM Publications, 2003, pp 5–21
23. Griffith EEH: Ethics in forensic psychiatry: a cultural response to Stone and Applebaum. *J Am Acad Psychiatry Law* 26:171–84, 1998
24. Rappeport JR: Effective courtroom testimony. *Psychiatr Q* 63: 303–17, 1992
25. Chiswick D: Use and abuse of psychiatric testimony. *BMJ* 290: 975–7, 1985
26. Reid WH: When clinicians must testify in court. *J Psychiatr Pract* 12:176–9, 2006
27. Melton GB, Petrila J, Poythress NG *et al*: Consultation, report writing, and expert testimony, in *Psychological Evaluations for the Courts* (ed 2). New York: Guilford Press, 1997, pp 519–46
28. Conroy MA: Report writing and testimony. *Appl Psychol Crim Just* 2(3):237–60, 2006
29. Gutheil TG: The presentation of forensic psychiatric evidence in court. *Isr J Psychiatry Relat Sci* 37:137–44, 2000
30. Resnick PJ: Guidelines for courtroom testimony, in *Principles and Practice of Forensic Psychiatry* (ed 2). London: Arnold, 2003, pp 37–44
31. Resnick PJ: The psychiatrist as an expert witness. Lecture outline in the Forensic Psychiatry Review Course. Bloomfield, CT: American Academy of Psychiatry and the Law, 2010
32. Gutheil TG: The problem of evasive testimony: the expert “waffle”. *J Am Acad Psychiatry Law* 35:112–7, 2007
33. Sattar SP, Pinals DA, Gutheil TG: Countering countertransference, II: beyond evaluation to cross-examination. *J Am Acad Psychiatry Law* 32:148–54, 2004
34. *Kent v. United States*, 383 U.S. 541, 554 (1996)
35. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)
36. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596 (1993)
37. Roach J: The performer’s body: an owner’s manual. Presented as The Barwick Lecture, Yale University School of Medicine, October 7, 2010