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When Worlds Collide: Therapeutic and Forensic Roles

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The goal of the article "Irreconcilable Conflict Between Therapeutic and Forensic Roles" (S. A. Greenberg & D. W. Shuman, 1997) was to help chart a course for the profession that would raise the quality of assistance provided by psychologists both to courts and to patient–litigants, without compromising the quality of either forensic examinations or therapeutic relationships. One solution was conceptually simple: Do not attempt to fulfill both roles for the same person. Although an individual psychologist might be competent in both the provision of therapy and conduct of forensic examination, this does not justify a psychologist providing both services to the same patient–litigant. Knowledge is necessary to provide both types of service. Wisdom is necessary to choose not to provide both services to the same person.

Keywords: conflicts, ethics, forensic, roles, standards, therapists

We appreciate this opportunity to revisit our 1997 article "Irreconcilable Conflict Between Therapeutic and Forensic Roles" (Greenberg & Shuman, 1997) and to reexamine its rationale.[1] Our article conceptualized the emerging concerns of the field at that time. Coincident with its publication and, without any collaboration between the various authors, Strasberger, Gutheil, and Brodsky (1997) won the Guttmacher Award for Outstanding Contribution to the Literature on Forensic Psychiatry for their article "On Wearing Two Hats: Role Conflict in Serving as Both Psychotherapist and Expert Witness," simultaneously reaching the same conclusion about the irreconcilability of therapeutic and forensic roles.

General Acceptance

The article by Strasberger et al. (1997) and ours were not alone in these observations. Both articles and others of their kind were cited and reproduced in large numbers and across many related contexts and professions. For example, "Irreconcilable Conflict . . ." has been cited with approval well over 1,000 times overall, including more than 70 peer-reviewed journals and contexts as different as office policy statements, professional practice guidelines, ethics education courses, and graduate school syllabi.[2] The irreconcilability of therapeutic and forensic roles resonated across the mental heath professions and across specific contexts, confirming the experiences of many professionals. For example, citing our work, the American Psychological Association Committee on Professional Practice and Standards (1998) *Guidelines for Psychological Evaluations in Child Protection Matters* caution psychologists to avoid serving in a therapeutic role when they are conducting psychological evaluations in child protection matters because of threats to objectivity.

Competence

Just because a psychologist whose primary professional identity is that of "therapist" is also competent at providing forensic examinations, and, conversely, just because a psychologist whose primary professional identity is that of "forensic examiner" is also competent at providing therapy, does not lead to the conclusion that he or she should provide both services to the same individual. Each role requires asking substantially differing questions, and each requires an approach that is fundamentally in conflict with, and interferes with, performance of the other task.

The Fabric of the Lawsuit

We note an argument that we had not identified previously for separating these roles. As reflected in the discovery provisions of the Federal Rules of Civil Procedure, the law makes important distinctions between treating and retained (forensic) experts and the obligations that apply to them. More stringent discovery disclosure requirements apply to experts who are retained (forensic) to provide expert testimony. Unlike treating experts who must simply be identified by the parties, forensic experts must present a detailed written report.

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[1] This reply responds to the article by Heltzel (in press).

[2] In June 2006, we conducted searches of Google; Science Citation Index Expanded, 1965–present; Social Sciences Citation Index, 1975–present; and Arts & Humanities Citation Index, 1975–present.

> To further the goal of helping the parties to more efficiently prepare for trial, the written report required by Rule 26(a)(2)(B) must contain a complete statement of all opinions to be expressed and the basis and reasons therefore, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years, the compensation to be paid for the study and testimony, and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. Fed.R.Civ.P. 26(a)(2)(B). (Gonzales v. Executive Airlines, Inc., 2006, at 30)

Why Treat These Witnesses Differently?

> The distinction drawn here [between a treating and a retained expert] is subtle but important. . . . The difference [between the types of expert witnesses] lies in the nature of the witness's involvement in the case. . .. [T]he psychiatrist who allegedly has been treating Plaintiff . . . has functioned as a direct participant in the events at issue. His role can be best characterized [as] . . . an actor with regards to the occurrences from which the tapestry of the lawsuit was woven. (Gonzales v. Executive Airlines, Inc., 2006, at 30)

This distinction is also important in appreciating the professional role conflict. When a therapist also serves as a forensic expert, the therapist is part of the fabric of the case, in part evaluating the impact of his or her own participation. Only by not being a person whose actions influence the mental status or condition of the litigant can the forensic expert offer an independent opinion regarding the litigant's mental status or condition.

Informed Consent

To view the problem from an additional perspective, consider the issue of *informed consent*. Informed consent is necessary to therapeutic and to forensic practice. The differences between the requirements of informed consent in each context offer a fresh perspective on the irreconcilability of therapeutic and forensic roles. One of the central considerations that shape the content of an informed consent is the requirement that a psychologist act with beneficence and nonmaleficence (American Psychological Association, 2002). In the case of therapy, this duty and the concomitant disclosure to the patient are focused almost entirely on the patient's welfare. Whatever therapeutic technique is employed should be chosen and implemented for the benefit of the patient. Like other witnesses, the oath expert witnesses take before testifying obligates them to give wholly truthful testimony not for the patient's welfare but instead without regard to the harm it may cause a patient–litigant. In acquiring informed consent for the concurrent performance of both a therapeutic and forensic procedure and ultimately such truthful testimony, the patient would therefore be consenting to, and the psychologist would be agreeing to, fundamentally inconsistent positions.

The "Diagnostic" Question

We do not suggest that therapists are inadequate diagnosticians but rather that they ask and answer different questions than do forensic experts. All assessment questions are not alike. A competent clinical assessment for the purposes of treatment is unlikely to be adequate for forensic purposes as well. The tasks address different questions. For example, clinical diagnosis or some comparable assessment process is typically the diagnostic goal for determining how to best treat, that is, be beneficent to, this individual. In dramatic contrast, the law determines the issues to be addressed in the forensic examination, rarely putting more than secondary consideration on the best modality of therapy. The issue for the forensic examiner is defined by substantive law and is most often competence or capacity: parental capacity, testamentary or contractual capacity, competence to stand trial or to be executed, or capacity for criminal responsibility.

Verification and Corroboration

The approach to acquiring and verifying information also varies considerably in therapeutic and forensic practice. Forensic experts cannot assume the veracity of any information on which they rely, and accordingly they use multiple sources and methods to gather information. Although veracity is also an issue for therapists, the incentives for litigants are more pervasive and profound. How many therapists routinely question their patient's family, friends, employers, or do collateral interviews or read deposition transcripts to verify what their patients claim in therapy? What would be the consequence for confidentiality and for the therapeutic alliance if they did? What would happen to forensic psychologists and psychiatrists on cross-examination, and the claims or defenses they seek to explain, if they did not also seek information from other sources?

Professional Role Choices

Experts considering this issue should note that, regrettably, the courts do not ordinarily prevent therapists from testifying about their patients on relevant issues for which they have an adequate foundation that is not barred by privilege (Shuman & Greenberg, 1998). Role conflict is a professional issue. Those who would tolerate dual roles should think long and hard about a world reflected in a trial court's ruling in a sexual harassment case in which the plaintiff's expert was her sister, a psychologist who had been treating her (Baskerville v. Culligan, 1994, reversed on other grounds):

> Culligan moves to exclude the expert testimony of Gale J. Bell, Ph.D. Dr. Bell is Baskerville's treating psychologist and her proposed expert witness regarding her psychological condition, treatment, and prognosis. Dr. Bell is also Baskerville's sister. Culligan does not dispute that Dr. Bell is a licensed psychologist or that Dr. Bell is qualified to render expert psychological testimony. However, Culligan maintains that it would be improper for Dr. Bell to render expert opinions regarding her sister's psychological condition. Culligan asserts that Dr. Bell's expert testimony would violate the American Psychology Association (APA)'s ethical code. Under the APA's code of ethical principles, psychologists must refrain "from entering into [a] personal, scientific, professional, financial, or other relationship . . . if it appears likely that such a relationship reasonably might impair the psychologist's objectivity" (Motion, Ex. D at P 1.17). Culligan maintains that Dr. Bell's professional relationship with Baskerville is unethical because they are sisters. Culligan reasons that the court must disqualify Dr. Bell and preclude her expert testimony in order "to preserve the public confidence in the fairness and integrity of the judicial proceedings" (Motion at 4). If at trial the court determines that Dr. Bell may

> testify as an expert, the court would not be sponsoring her testimony or vouching for its objectivity. Rather, it would be the jury's function to assess the credibility of Dr. Bell's opinions and to determine the weight to be given her testimony. Culligan shows that Dr. Bell's professional relationship with Baskerville is unorthodox and raises serious questions regarding Dr. Bell's objectivity. However, these are appropriate subjects for Culligan's cross-examination of Dr. Bell. The testimony is not excluded on the motion in limine. (at *10-11)

Dr. Bell might well have had the skills to be a competent therapist and expert witness. The court, as is typical of most courts, did not exclude her testimony on the basis of the defense's claim that Dr. Bell violated APA's code of ethical principles due to a role conflict. The trial court relied instead on cross-examination to inform the jury regarding how much weight, if any, they should give Dr. Bell's testimony.[3] We argue that professional norms should have led Dr. Bell to not provide the role-conflicting services in the first place, long before her doing so became an issue for the court.

Mutually Exclusive Choices

As discussed above, the decision to provide therapeutic services and forensic services requires mutually exclusive professional choices. Providing each service requires the expert to establish a mutually exclusive choice of priorities between that of patient welfare and assistance to the court. Providing each service requires a mutually exclusive choice between a relationship with the patient–litigant based on trust and empathy or one based on doubt and distance. Providing each service also requires a mutually exclusive level of involvement in the fabric of the patient–litigant's mental health, either trying to better it or dispassionately evaluating it for the court.

Conclusion

The 10 differences that make forensic and therapeutic roles irreconcilable are no less critical today than when originally published 10 years ago (Greenberg & Shuman, 1997). Those differences reflect that the patient–litigant has two roles: one as therapy patient and another as plaintiff in the legal process. The patient–litigant is the client of the therapist for the purposes of treatment and the client of the attorney for the purposes of representation through the legal system. The forensic examiner is retained by the attorney (or occasionally the court) for the purposes of litigation. The legal protection against compelled disclosure of the contents of a therapist–patient relationship is governed by the therapist–patient privilege and can usually only be waived by the patient or by court order; legal protection against compelled disclosure of the contents of the forensic examiner–litigant relationship is governed by the attorney–client and attorney–work-product privileges. The forensic examiner, having been retained by the attorney, is acting as an agent of the attorney in examining the party or parties in the legal matter.

The therapist is a care provider and usually is supportive, accepting, and empathic; the forensic examiner is an assessor and is usually neutral, objective, and detached as to the forensic issues. To perform his or her evaluative task, a therapist must be competent in the clinical assessment and treatment of the patient's impairment; a forensic examiner must be competent in forensic evaluation procedures and psycholegal issues relevant to the case. The forensic examiner must know the basic law as it relates to the assessment of the particular impairment claimed.

Therapists use their expertise to test rival diagnostic hypotheses to ascertain which therapeutic intervention is most likely to be effective; forensic examiners use their expertise to test rival psycholegal hypotheses that are generated by the elements of the law applicable to the legal case being adjudicated. The degree of scrutiny to which information from the patient–litigant is subjected is different, and historical truth plays a different role in each relationship. Therapeutic evaluation is relatively less structured than is forensic evaluation. The psychotherapeutic process is rarely adversarial in the attempt to reveal information. Forensic evaluation, although not necessarily unfriendly or hostile, is nonetheless adversarial in that the forensic examiner seeks information that both supports and refutes the litigant's legal assertions.

Therapy is intended to aid the person being treated. A therapist–patient relationship is predicated on principles of beneficence and nonmaleficence—doing good and avoiding harm. A therapist attempts to intervene in a way that will improve or enhance the quality of the person's life. Effective treatment for a patient is the reason and the principal defining force for the therapeutic relationship. This outcome for the patient is not a goal of forensic examination, and its impact is often the opposite of enhancing the quality of the person's life. A forensic examiner is obligated to be neutral, independent, and candid, without becoming invested in the legal outcome. A forensic examiner advocates for the findings of the evaluation, whatever those findings turn out to be. The role of a forensic examiner is to assess, judge, and report that finding to a third party (attorney, judge, or jury) who will use that information in an adversarial setting.

The therapist is intimately involved in the success or failure of the patient's therapy; the forensic examiner does not intervene therapeutically and attempts to not become part of the fabric of the patient–litigant's therapeutic outcome. The examiner's role is not one of avoiding to offer otherwise accurate testimony because the offering of that testimony might damage the patient–litigant's progress in therapy.

To perform a competent forensic examination, the expert must not only possess the requisite skills and expertise to perform the tasks of the examination, the expert must also exercise the untainted and unbiased judgment that is likely to become impaired when one provides both therapeutic and forensic services to the same individual. As to the argument that such taint and bias inherent in such dual roles can be avoided by expertise and mental resolve, one need only to be familiar with writings such as Fischhoff (1982), Koriat, Lichtenstein, and Fischhoff (1980), Slovic and Fischhoff (1977), and Gilovich, Griffin, and Kahneman (2002) to appreciate that one's attempts to argue with onself against being biased are not adequate antidotes to that bias.

The provision of therapeutic services and forensic services involves a specialized set of tasks, each asks substantially different questions, and each requires a substantially different area of competency. The same person can possess both sets of expertise. The

[3] Curious readers might be interested to know that Baskerville, the plaintiff, prevailed in her claim at the trial court level, and the case was overturned on appeal for reasons unrelated to Dr. Bell's testimony.

core problem in role conflicts is not a lack of expertise. Most therapists are competent diagnosticians for therapeutic purposes, and many may also possess the skill and expertise to examine a patient–litigant for forensic purposes. Therapists (and for that matter, forensic examiners) may also possess the skill and expertise, and be appropriately licensed, to drive a motorcycle, give massages, style hair, broker real estate, and sell their own artistic creations. Possessing that competency and licensure does not argue that therapists should provide therapy to their patients on motorcycles, give them massages, style their hair, or sell them homes or art. This is not because they are not competent to do so. This is because, professionally, the tasks are irreconcilably mutually exclusive. No matter how dually competent, a professional cannot ethically and adequately accomplish both sets of tasks with the same patient–litigant. Possessing the dual competencies necessary to provide both therapy and examination services to the same individual does not explain why a psychologist should provide both services to the same individual. In our humble opinion, prudent psychologists will not.

References

American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist, 57,* 1060–1073.

American Psychological Association Committee on Professional Practice and Standards. (1998). *Guidelines for psychological evaluations in child protection matters.* Washington, DC: American Psychological Association.

Baskerville v. Culligan Intern. Co., 1994 U.S. Dist. LEXIS 5296 (N. D. Ill), rev'd on other grounds, 50 F. 3d 428 (7th Cir. 1995).

Fischhoff, B. (1982). Debiasing. In D. Kahneman, P. Slovic, & A. Tversky (Eds.), *Judgment under uncertainty: Heuristics and biases* (pp. 422–444). New York: Cambridge University Press.

Gilovich, T., Griffin, D., & Kahneman, D. (Eds.). (2002). *Heuristics and biases: The psychology of intuitive judgment*. New York: Cambridge University Press.

Gonzalez v. Executive Airlines, Inc., 2006 WL 833134 (D. Puerto Rico).

Greenberg, S. A., & Shuman, D. W. (1997). Irreconcilable conflict between therapeutic and forensic roles. *Professional Psychology: Research and Practice, 28,* 50–57.

Heltzel, T. (in press). Compatibility of therapeutic and forensic roles. *Professional Psychology: Research and Practice.*

Koriat, A., Lichtenstein, S., & Fischhoff, B. (1980). Reasons for confidence. *Journal of Experimental Psychology: Human Learning and Memory, 6,* 107–118.

Shuman, D. W., & Greenberg, S. A. (1998). The role of ethical norms in the admissibility of expert testimony. *The Judges' Journal, 37,* 4–9, 42–43.

Slovic, P., & Fischhoff, B. (1977). On the psychology of experimental surprises. *Journal of Experimental Psychology: Human Perception and Performance, 3,* 544–551.

Strasberger, L., Gutheil, T., & Brodsky, A. (1997). On wearing two hats: Role conflict in serving as both psychotherapist and expert witness. *American Journal of Psychiatry, 154,* 448–456.

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