Ridiculous Statements by Mental Health Experts

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KEYWORDS

• Testimony • Expert witness • Children and adolescents
• Forensic psychiatry

The professional activities of forensic mental health practitioners are guided by the standards of practice for conducting particular types of evaluations and the ethical principles that have been published by professional organizations. For example, the American Academy of Child and Adolescent Psychiatry,[1] the American Psychiatric Association,[2] the American Academy of Psychiatry and the Law,[3] and the American Psychological Association[4] have published ethical principles for their members. These organizations have also developed guidelines or practice parameters that help define the standards of practice. For example, the American Psychological Association prepared *Specialty Guidelines for Forensic Psychology*.[5] The American Academy of Child and Adolescent Psychiatry developed a "Practice Parameter for Child and Adolescent Forensic Evaluations."[6] There are also major textbooks that give guidance to both trainees and practitioners, such as *Principles and Practice of Child and Adolescent Forensic Mental Health*,[7] *Clinical Handbook of Psychiatry and the Law*,[8] and *Principles and Practice of Forensic Psychiatry*.[9] These publications are only examples; there are many published documents that may reflect that standard of practice for mental health professionals. Of course, the standard of practice in a case is ultimately determined not by a practice guideline but by the circumstances and details of the particular case.

DISAGREEMENT AMONG EXPERTS

It is not unusual for mental health experts to disagree when they prepare dueling reports, testify at depositions and trials, and publish articles in the professional literature. It is usually a sign of constructive dialog when experts compare notes and try to understand how they came to different conclusions. For example, opposing experts may have collected incompatible or even contradictory data during the course of their

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Child Adolesc Psychiatric Clin N Am 20 (2011) 557–564
doi:10.1016/j.chc.2011.03.003 **childpsych.theclinics.com**
1056-4993/11/$ – see front matter

respective evaluations or the experts may have collected the same data and then disagreed about the implications or conclusions that follow from the data. In many circumstances, there may simply be an honest difference of opinion because of varying interpretations of nuances that were observed in the case.

In some cases, however, disagreement among the experts occurs because an expert has employed a methodology that is far outside the usual procedure or has analyzed data in an idiosyncratic and presumably self-serving manner. After proceeding down the wrong path, the expert may arrive at conclusions that are highly implausible. On some occasions, which are unusual, testimony by a mental health expert may be so deviant from accepted ethical principles and standards of practice that it may be called ridiculous. Ridiculous, which evolved from the Latin word for ridicule, means absurd, preposterous, or silly.

There are at least 3 problems with ridiculous statements by mental health experts. First, in a trial, the trier of fact may believe the ridiculous testimony and arrive at an erroneous legal conclusion. Second, the trier of fact and other individuals involved in the case may recognize that the testimony is ridiculous, which would damage the reputation and credibility of the expert who made the statement. Third, preposterous statements or conclusions expressed by one expert may diminish the respect of judges and attorneys for the opinions of all mental health experts.

FIVE VIGNETTES

This article considers 5 situations (based on formal reports, testimony at trial, or professional writing) in which a mental health expert made ridiculous statements or arrived at ridiculous conclusions. In some of these cases the expert appeared to adopt nonstandard methods of assessment and arrived at illogical conclusions and recommendations for the purpose of favoring the side that retained them. Of course, the role of an expert as a hired gun may compromise the reputation of legitimate, ethical experts. These cases, which are disguised, occurred in several different states and settings. The actual names of the mental health experts and evaluees are not used. Each vignette is followed by a brief discussion. Following the case illustrations, the author provides several suggestions to aid mental health practitioners in avoiding this type of error.

Pellet Gun and Neuropsychology

Andy, a 10-year-old boy, was playing at a friend's house. The friend had recently received a gift of an air rifle and was trying to figure out how to pump up the air rifle for maximum velocity. The air rifle did not shoot BBs, but small pellets. Andy's friend accidentally fired the pellet gun and hit Andy in the left side of his forehead. Although initially it seemed that Andy had sustained only a superficial injury, later in the day he became unusually somnolent. At a local emergency room, a brain scan revealed that the pellet was lodged in the left temporal region of his brain. Andy was treated to reduce the elevated pressure around his brain and his most obvious symptoms resolved. The neurosurgeons decided to not remove the pellet.

Andy's parents initiated a legal action against the manufacturer of the pellet gun, and he was evaluated by forensic neuropsychologists for both the plaintiffs (Andy's parents) and the defendant (the gun manufacturer) of the lawsuit. The forensic neuropsychologists were not asked to address the liability of the gun manufacturer, but they attempted to determine if Andy had been permanently damaged by this head injury. For example, they tried to compare Andy's cognitive and emotional functioning before and after the injury. The forensic neuropsychologist, Dr A, who was hired by the

defendant, the gun manufacturer, made an unusual, ridiculous statement in his report: "I am not aware of any scientific basis for saying that this type of injury causes permanent brain damage."

Discussion

On the face of it, the statement by Dr A was highly implausible. It seemed extremely unlikely that the average neurosurgeon, psychologist, psychiatrist, or parent would consider a penetrating injury to a child's temporal lobe to be a benign event. Actually, it was easy to show that there were articles in the medical literature regarding the consequences of this type of head injury in children.[10–13] Ultimately, the legal team for the defendant did not use Dr A at trial because his opinion was unbelievable.

Damages from Street Hockey

A school counselor, Mr Bunson, sexually molested about 10 students, all boys, at a public middle school. After the sexual abuse was disclosed and investigated, Mr Bunson was arrested, tried, convicted, and imprisoned. The parents of several of the students initiated a lawsuit against school personnel and the board of education. Both the plaintiffs (the parents) and the defendants (the school personnel and the board of education) hired forensic mental health experts. Those mental health experts were not asked to address the liability of the defendants, but to assess whether the children had been psychologically damaged by the sexual abuse. Also, the mental health experts were asked to estimate the current and future treatment, if any, these children will require to recover from the sexual abuse.

Obviously, Mr Bunson had seriously molested some of the boys who had been injured by the abuse that they experienced. However, one of the alleged victims, Bradley, alleged that Mr Bunson had touched him in an extremely brief, superficial manner. Specifically, Bradley related that he and several other students were playing street hockey with Mr Bunson during an after-school program. During that play activity, the front part of Mr Bunson's body bumped into the back part of Bradley's body. Bradley turned to Mr Bunson and said, "Get away from me! I'm not gay!" The mental health expert for the plaintiffs, Dr B, thought that Bradley had been psychologically injured by that experience and she gave him the diagnosis of posttraumatic stress disorder.

Dr B recommended the same treatment regimen for Bradley, who had a minimal unpleasant experience with Mr Bunson, as she did for the boys who had been significantly abused. Dr B, the expert for the plaintiffs, recommended a multimodal treatment program for Bradley, which consisted of the following components: weekly individual therapy for 10 years; weekly group counseling for 3 years; weekly family therapy for 3 years; weekly private tutoring for 6 years; as well as sports activities, crisis intervention, health monitoring, and vocational testing. The expert estimated that Bradley would need 1500 hours of counseling and other interventions to recover from his brief encounter with Mr Bunson.

Discussion

It could be argued that Bradley may have been injured in some limited manner because of his relationship with Mr Bunson. However, it was ridiculous to claim that Bradley had been severely injured by a transitory event during a sports activity that lasted approximately 1 second. Also, it was ridiculous to assert that this boy might need 10 years of individual psychotherapy to recover from that experience. Dr B's absurd opinions regarding Bradley's need for future treatment may have diminished the weight of her opinions regarding the other victims of Mr Bunson.

A Child who was not Abused

The mother of a 3-year-old boy, Charlie, repeatedly took him to primary care physicians, emergency room personnel, and pediatric urologists because she thought her son had been sexually abused by his father. The parents were divorced and the mother sought to exclude the father from the child's life.

Ultimately, the child protection service (CPS) became involved and a CPS worker interviewed Charlie in his bedroom at his mother's home. In that interview, Charlie's statements were confused, irrelevant, and incomprehensible. Charlie did not provide any meaningful or intelligible information. He apparently was not capable of giving a simple, coherent description of a past event. When asked suggestive questions, Charlie tried to give answers that he thought would please the interviewer. When pushed to answer questions beyond his scope of knowledge, Charlie gave nonsensical and fantastical answers, such as saying his father hammered his penis with a shovel. Although there was zero forensically useful content in that interview, CPS staff concluded that Charlie's father sexually abused the boy.

At a subsequent child custody trial, a forensic psychologist hired by the mother, Dr C, testified that the allegations based on the CPS interview were more credible than the forensic evaluation conducted several months later. Dr C testified that the chaotic, disorganized CPS interview indicated that Charlie had been sexually abused by his father because, "I've interviewed hundreds of children, where sexual abuse allegations have been made, and when you get a situation like this the reporting of the child contemporaneous with the allegations is significantly and profoundly more real than what the child would report 6 months or a year later." In the end, the trial judge disregarded the testimony by Dr C and the court of appeals upheld the decision of the judge.

Discussion

In this case, Dr C was basing his opinion on an abstract, general principle: earlier interviews are more reliable than later interviews. The expert had the idea that the general principle was more important than the actual data collected during the investigation. Dr C's testimony was preposterous because he had never listened to the recording or read the transcript of the CPS interview. He had expressed a strong opinion about the ultimate question of the hearing without ever interviewing the child or reviewing the actual data of the CPS interview. Dr C's methodology violated ethical standard 9.01b of the American Psychological Association: "Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination adequate to support their statements or conclusions."[4]

Interviewing a Nonverbal Child

When David was 6 years old he attended a special education preschool program at a public elementary school. David had severe mental retardation and a developmental psychologist said he exhibited "a severe receptive and expressive language disorder." Sadly, David and other students in his special education class were mistreated by their teacher, Ms Downing. According to witnesses, Ms Downing restrained David on his cot during naptime because otherwise he would get up and walk around. Ms Downing reportedly hit David with a yardstick and took him outside the building in the winter without his coat on. When the abuse became known, David's parents sued the school system for allowing the teacher to abuse David.

The family's mental health expert, Dr D, evaluated David, which included an interview that was electronically recorded. In the interview, David made various sounds

but no words. He was looking at a book and did not respond when Dr D asked him to point to a boy and a person and look at a tree and a bird. David did not appear to understand what Dr D said to him. Dr D repeatedly tried to communicate with David. He repeatedly asked David what he remembered about his teacher, Ms Downing. He repeatedly asked questions, such as "What did Ms Downing do to you?" At no time did David give a meaningful response, either verbal or nonverbal, to Dr D's questions.

David was also interviewed by the mental health expert hired by the school system. In that interview, David was nonverbal. He was able to imitate the examiner and clap his hands. At times he played a simple game of handing objects back and forth. He tried to put items of interest in his mouth. David was able to use a colored marker to make random marks on paper but was not able to make a scribble. He was not able to stack one block on top of another.

Dr D's written report was notable because he claimed to derive significant meaning from David's activities during the forensic interview. Dr D stated, "I was impressed that my introducing the topic of Ms Downing produces marked behavioral change that appears very meaningful. He was remarkably negatively reactive to discussion of Ms Downing. Introduction of her name leads to David's agitation and oppositional behavior." In fact, however, the electronic recording of the interview revealed no reaction at all to Dr D's questions regarding Ms Downing.

Discussion

In this case, the plaintiff's expert, Dr D, totally misrepresented David's activities and reactions that occurred during his forensic interview, to the point of being ridiculous. Fortunately, the interview was electronically recorded so it could be examined by the expert for the defendant and other individuals involved in the case. A careful review of the digital file revealed that David did not appear to understand anything Dr D said and did not respond to Dr D's questions in any meaningful manner.

Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition) Controversy

Since 2008, the author of this article and his colleagues have campaigned that the concept of parental alienation become a new diagnosis to be included in the *Diagnostic and Statistical Manual of Mental Disorders,* Fifth Edition (DSM-5). They submitted a formal proposal to the DSM-5 Task Force in 2009 and published their proposal in a journal article[14] and a book[15] in 2010. The authors' definition of parental alienation was a mental condition in which "a child—usually one whose parents are engaged in a high-conflict divorce—allies himself or herself strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification."[15]

The proposal that parental alienation become a DSM-5 diagnosis generated a good deal of discussion among mental health professionals. Many psychiatrists and psychologists agreed that parental alienation should be considered a relational problem, but not a mental disorder in DSM-5. Some of the discussion regarding that proposal, especially comments on Web sites and Internet blogs, was extremely negative and hostile to the concept of parental alienation. One of the opponents of the author's proposal regarding parental alienation was Dr E, a well-known psychiatrist. Dr E published his opinions in a mental health newspaper, which were extremely critical of both the concept of parental alienation and the advocates of the proposal, perhaps to the point of being libelous. In his essay, Dr E referred to parental alienation syndrome (PAS) as "this bit of junk science invented by a psychiatrist…." In referring to the proposal that parental alienation become a diagnosis in DSM-5, Dr E said, "In recent years, the ball has been picked up by 'father's rights' groups who don't like

to be interfered with when they are sexually abusing their children. This group has petitioned the DSM task force to include PAS in the publication."

Dr E clearly stated that individuals who proposed that parental alienation should become a diagnosis in DSM-5 engaged in child sexual abuse. In response to Dr E's ridiculous statements, at least 8 mental health and legal professionals wrote letters to the editor of the mental health newspaper that published Dr E's essay. Dr E was required to correct his outrageous statements and make amends. In a subsequent issue he said, "I apologize for suggesting that all fathers who accuse mothers of PAS are sexually abusing their children. That was clearly an overstatement that I retract." Also, "I do not deny that parental alienation occurs and that a lot of people are hurt when there is an alienator."

Discussion

In this example, Dr E's ridiculous statement did not occur directly in a legal context, such as an expert report or testimony. However, the proposal that parental alienation be included in DSM-5 has both clinical and legal implications and Dr E was clearly expressing opinions as an expert on that topic. In the previous examples of ridiculous statements in this article, the give and take between various opinions played out in the form of opposing expert reports or experts battling in a courtroom. In this example involving a controversial proposal that is being considered by DSM-5 personnel, the dialog took place in a public forum.

SUGGESTIONS FOR FORENSIC PRACTITIONERS

It may be extremely frustrating when a forensic expert is confronted with a ridiculous statement or opinion in a legal setting or other public venue. The expert may feel totally unprepared to analyze or discuss an assertion that seems to be preposterous and have no foundation. Here are suggestions that forensic experts may consider if they find themselves in that situation.

When testifying, do not be reluctant to say another expert is flatly wrong if you know that is the case, even if you do not have published research on hand to back up your statement. For example, in the case of alleged sexual molestation while playing street hockey, it would seem preposterous to most jurors for the plaintiffs' expert to say that the child needed 10 years of individual psychotherapy to recover from being bumped during a game. It is a truism that minor problems should require only minimal psychotherapy.

If you know ahead of time that another expert is going to make a ridiculous statement, do some research and secure references that support your position. For example, regarding the case in which a child was shot in the head with a pellet from an air rifle, the typical mental health expert would probably not be familiar with research pertaining to that type of injury. It was easy, however, to find review articles by neurologists and neurosurgeons regarding that topic.

If you feel that a mental health expert violated the ethical precepts of their own profession in making a ridiculous statement, consider filing a complaint with the relevant committee or board of ethics. For example, the psychologist who testified about the importance of a particular interview without reviewing either the audiotape or the transcript of the interview appeared to violate one of the ethical standards of the American Psychological Association. In such a case, it would be appropriate to refer the matter to the Ethics Committee of the American Psychological Association for their consideration.

However, if the expert's ridiculous statement occurred in a public forum, it might be possible to redress the situation in the same manner. If the statement occurred in

a publication, contact the editor promptly. If the statement occurred on television, contact the producer of the show. It may be helpful to let colleagues know what has occurred, because they may also want to contact the editor or producer of the offensive statement. Typically, you should insist that the statement be retracted or corrected.

Preventing an error is almost always preferable to correcting the error. Mental health professionals who intend to offer an expert opinion should limit their comments to topics that they thoroughly understand. Otherwise, they may accidentally arrive at a ridiculous conclusion and embarrass themselves when testifying. Also, forensic practitioners should make a regular practice of asking a colleague to review the draft of a report before it is finalized. Ask the colleague to read the report with a critical eye and question your assumptions and conclusions. A person reading the final draft of your report for the first time may be able to point out small errors as well as major gaffes in your text.

SUMMARY

Mental health experts need to improve their image and reputation as credible witnesses. There is no way to avoid an occasional battle of the experts, and most people understand that honest and experienced experts may arrive at different conclusions. However, statements that are ridiculous or preposterous are damaging in several ways: to the reputation of the expert making the ridiculous statement; by extension, to the credibility of other experts; and perhaps to the outcome of the case, if the ridiculous statement is believed by the trier of fact. To minimize the frequency of that sad occurrence, mental health experts should scrutinize their own reports and testimony as well as the work of their colleagues.

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