Many psychiatrists feel intimidated by or frightened about courtroom testimony. However, with the proper preparation, the psychiatrist need not have a difficult experience. It is the role of an expert witness to educate the court on matters that are beyond a layperson's understanding. In about 80% of civil cases and 50% of felony prosecutions, litigants call on expert witness testimony.¹ The court or attorneys may ask psychiatrists to conduct a psychiatric examination and render opinions on criminal issues such as competency to stand trial, insanity, or mitigation of penalty. In fact, the United States Supreme Court has commented on the "pivotal role that psychiatry has come to play in criminal proceedings."² In addition, civil issues may be addressed, including malpractice, disability, and psychological damage.

A psychiatrist may be requested to testify as either a "fact witness," or an "expert witness." A fact witness simply testifies about direct observations. A common example would be a treating psychiatrist who is asked to testify about his or her patient's symptoms and course of treatment. In this situation, the psychiatrist is not ordinarily asked to give opinions. An expert witness has "special knowledge" that the average person may not possess. The psychiatric expert witness may testify in the form of an opinion about facts directly related to the profession of psychiatry. In the role of expert witness, the psychiatrist's task is to "shine the light" of psychiatric science and clinical knowledge on the legal question. Put another way, the role of the forensic psychiatrist is to "assist the trier of fact to understand the evidence or to determine a fact in issue."³ The "trier of fact" may be a jury, or in the case of a bench trial, a judge. When serving as an expert witness, the psychiatrist should have an understanding of certain guiding principles (Table 1).

### TABLE 1
Guiding principles for the psychiatric expert ²⁰-²²
These principles include the psychiatrist's duty to educate the court, clarify relevant psychiatric issues, remain honest and objective, offer well-reasoned opinions, and readily acknowledge the limitations of his opinion. Beyond these fundamental principles, other expert qualities have been described as playing an important role in effective testimony. These qualities include proper qualifications, good communication skills, and familiarity with legal standards and procedures.4

Ethics, truth, and advocacy

In the United States and the United Kingdom, trials are based on an adversarial model in which attorneys are "zealous advocates" of the causes they represent. This may present a confusing paradigm shift for the novice psychiatric witness. To maintain ethical standards, the psychiatric expert witness must resist the temptation to accept an advocate's role.5 Two general models of ethical expert testimony have been described.6 In the "advocate for truth" model, the expert becomes a completely neutral observer and adheres to absolute truth during testimony. In contrast, the "honest advocate" model holds that it is acceptable to be a persuasive advocate for one's honest opinion. In actual practice, most experts adopt a combination of these 2 models.

It is unrealistic to assume that the psychiatric expert witness can be completely impartial, but the psychiatrist should strive to initially approach a case with an impartial attitude. Once a comprehensive analysis has produced a well-reasoned opinion, it is only human to identify with one's opinion. On taking the witness stand, the expert must strive to impartially preserve the truth. Relevant information may not be kept secret.7 The expert must guard against a sense of "loyalty" to the retaining attorney, which might cause a temptation to go from objective expert to advocate. Blatant advocacy is easily recognized by the trier of fact and reduces the credibility of the expert. The psychiatrist should not go beyond the available data or the scholarly foundations of his testimony.8 An ethical psychiatric expert can enhance credibility by appropriately acknowledging the facts of the case that are unfavorable to his opinion, the limitations of his opinion, and hypothetical situations under which his opinion would be different.3

Some degree of skepticism already exists in US courts about diagnostic boundaries and evidence of mental disorders.9 For this reason, psychiatric experts must strive not only for accuracy in diagnosis but also for honesty about limitations in the field. Commonly observed reasons that psychiatrists intentionally or unintentionally claim greater certainty in ill-defined areas include a desire for a just outcome and having an agenda of bringing public attention to a particular mental condition.

Preparation

When approached by an attorney, the psychiatrist should first seek to clarify the specific legal question that is being asked. Before beginning an evaluation, the psychiatrist should determine whether he has the proper "knowledge, skill, experience, training, or education" required.3 Table 2 lists questions that can assist psychiatrists in determining whether they are qualified for a particular case.

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<th>Are you qualified to be an expert witness?</th>
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Once the qualification issue has been resolved, the psychiatrist should obtain the precise legal standard for the referral question, which may vary from one legal jurisdiction to another. For example, in a professional malpractice case, it is critical that the expert apply the proper standard of care for that jurisdiction. An opposing attorney may seek to have the expert's report declared inadmissible if it uses the wrong legal standard.

Before the trial, the psychiatric expert must engage in considerable preparation and planning. One authority has described guidelines known as the "6 P's of trial preparation." These include preparation, planning, practice, pretrial conference, pitfalls, and presentation. Preparation refers to thoroughly reviewing the entire casefile as well as analyzing the opposing expert's opinions. In this way, the expert develops mastery of the case and is well pre-pared for rebuttal of the opposing expert's testimony.

The underlying basis for the expert's opinion must be clearly explained and supported. The importance of having a logical rationale underlying the opinion cannot be overestimated. Jurors and judges often determine the credibility of an expert based on the soundness of the reasoning for the expert's opinion. Psychiatrists should refrain from giving an opinion using "ultimate issue" language, such as the "defendant was sane/insane."

Sometimes, the expert's testimony will not occur on the day that was originally scheduled. The expert should engage in planning that allows for the possibility that the trial will extend into the next day. The expert should practice how he will convey his opinion to the jury. If visual aids are to be used or blackboard drawing is to be done, this should be practiced as well. A pretrial conference with the retaining attorney is recommended to clarify how the expert's testimony will fit into the attorney's theory of the case. In considering potential pitfalls, the expert should review the weaknesses of his opinion, and anticipate what can be attacked on cross-examination. Finally, in polishing the presentation, the expert should be clear on how he will communicate his opinion to the trier of fact. Simple analogies and metaphors are helpful in conveying complex material to juries.

Court testimony
The psychiatric expert witness first undergoes direct examination by the retaining attorney. The direct testimony consists of nonleading questions, which allow the witness to express opinions and reasoning without interference. If there has been sufficient pretrial preparation with the attorney, this process should unfold in an organized manner. The expert witness should direct his remarks to the trier of fact in a clear and understandable fashion. Cross-examination is conducted by the opposing attorney to test the credibility of the testimony. Next, redirect examination allows the retaining attorney to repair damage done during cross-examination and to further clarify points. Finally, recross-examination must be limited to issues raised in the redirect examination.

Direct examination
At the beginning of the direct examination, the qualifications of the expert are elicited. Ordinarily, any licensed physician will be recognized as an expert witness who has the right to give opinions. Qualifications include the schools attended, internship, residency training, academic titles, hospital affiliations, board certifications, and honors. Journal publications that are relevant to the case should be mentioned. It is preferable to have the attorney elicit these qualifications through several questions to avoid the appearance of immodesty. Next, the witness will be asked whether he has formed an opinion with reasonable medical certainty regarding the contested issue. The precise
The definition of "reasonable medical certainty" varies from one jurisdiction to another. In many states in the United States, it simply means "more probable than not."

The psychiatric expert witness should come across as likeable and possess a credible presentation style. Because the expert is under constant observation while on the witness stand, attention should be paid to nonverbal communication. The expert should make eye contact with the jury to see whether they understand his testimony. A critical goal of the expert witness is to establish his credibility through expertise, dynamism, and trustworthiness. Expertise involves credentials, training, and experience. Dynamism relates to the style of delivery during testimony. Trustworthiness refers to the appearance of objectivity and sincerity; it is often more important than credentials in achieving credibility.

The expert's style of speech can significantly influence credibility. Research has shown that powerful speech is more convincing and credible than powerless speech. Characteristics of powerful speakers include a straightforward style and greater use of 1-word answers. Thus, the expert should avoid language that hedges or qualifies his opinion. Answers to specific questions during direct testimony should be kept brief and clear. Testimony should be kept free of jargon. Professional jargon in the courtroom is likely to be misunderstood at best, and may even be made to look ridiculous. It is preferable to use equivalent words, such as "mood" for "affect," even if they are not perfect synonyms. Instead of saying, "The patient showed marked psychomotor retardation," a better approach would be to say, "His movements and speech were unusually slow."

The expert should avoid speaking in a condescending manner. If the jury feels patronized, they will be less likely to accept what the expert is saying. Nothing alienates a jury more quickly than a psychiatric expert witness who appears arrogant. When testifying, the expert should attempt to display dignity, confidence, and humility. Jurors are adept at spotting insincerity and condescension. The average juror's attention span has been estimated to be about 20 minutes. Time should not be squandered. The jury should be told what they need to know, not all that you know. Table 3 gives a list of what jurors want most from an expert.

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<th>TABLE 3</th>
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<td>What juries want</td>
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- [12] In many states in the United States, it simply means "more probable than not."
- [13] Trustworthiness refers to the appearance of objectivity and sincerity; it is often more important than credentials in achieving credibility.
- [14] The expert's style of speech can significantly influence credibility. Research has shown that powerful speech is more convincing and credible than powerless speech.
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- [17] The average juror's attention span has been estimated to be about 20 minutes. Time should not be squandered.
- [18] Table 3 gives a list of what jurors want most from an expert.
Cross-examination
Vigorous cross-examination of opposing experts has been a long-standing tradition in American law. To be effective, the expert should understand how attorneys prepare to cross-examine an expert. Counsel for the opposition will most likely spend many hours preparing for the cross-examination of an expert witness. The process may include a detailed analysis of the expert's curriculum vitae, the expert's report, Web sites, and previous testimony to determine where the expert is most vulnerable.

The purpose of cross-examination is to either discredit the witness or clarify direct testimony in order to neutralize that testimony, which may be damaging. The cross-examining attorney may attempt to show the expert witness to be a fool, a liar, and a nitwit. The main goals of the cross-examining attorney are to (1) control the scope of the expert's answers, (2) tell his client's story, (3) minimize the expert's impact, and (4) limit the expert's input. The expert should know the facts of the case cold. Other preparation will include organizing case files, reviewing depositions, and memorizing key concepts. Table 4 gives a list of the most important areas of preparation.

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<td>Preparation for cross-examination</td>
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It is always advisable for an expert witness to have a pretrial meeting with the retaining attorney to review how to communicate his opinions effectively. The retaining attorney may be able to identify what questions should be anticipated on cross-examination and may even engage in some focused mock cross-examination. Once on the witness stand, the expert is obliged to tell the truth regardless of the effect it may have on the outcome of the trial.

When responding to cross-examination, the expert should seek to maintain the same politeness and responsiveness he showed on direct examination. Credibility is decreased when an expert who was polite on direct examination suddenly becomes rude or defensive on cross-examination. This has been referred to as the "Dr Jekyll and Mr Hyde" syndrome. The cross-examiner gains a distinct advantage when the expert loses his temper because it makes the expert appear to be emotionally overinvolved, rather than a dispassionate, credible witness. Table 5 lists behaviors that the testifying expert should avoid during testimony.
The cross-examiner may seek to attack the expert witness on credentials, bias, adequacy, and validity. The credentials of an expert witness may be attacked by showing the witness's lack of experience or education. A cross-examining attorney may bring out the fact that the expert witness has not achieved board certification, or required more than 1 attempt to do so. The goal of the cross-examining attorney is to impugn the expert's credibility.\textsuperscript{17} Table 6 lists some of the most common areas of cross-examination.
The amount of previous testimonial experience may also be used to discredit an expert. The cross-examiner may imply that the witness is not credible because of limited testimonial experience.
Conversely, if a witness does have substantial testimonial experience, the cross-examiner may try to show the witness to be a "hired gun." If the witness is asked whether or not he is a professional witness, one good answer is, "My profession is the practice of psychiatry. It just so happens that I am frequently asked to testify on psychiatric issues."

The appearance of bias is decreased if the expert is able to say that he has testified on behalf of both prosecution and defense, or has testified on behalf of both plaintiffs and defendants. Another way that a cross-examining attorney may attempt to show bias is by asking about fees or pretrial conferences. The expert should not try to avoid answering these questions. If asked how much he has been paid for his testimony, the expert may reply, "I'm not being paid for my testimony. I'm being paid for my time, like the other professional people in the courtroom." Similarly, the expert should not feel embarrassed about admitting to having had a pretrial conference with a retaining attorney.

A cross-examiner may attempt to demonstrate contradictions between police accounts and the defendant's version. If the psychiatrist accepts the defendant's account at face value, inconsistencies may make the psychiatrist look gullible and the defendant look guilty. The validity and reliability of clinical examinations may be attacked. Evidence of limited reliability of psychiatric examinations has been collected in *Coping With Psychiatric and Psychological Testimony*. Attempts should not be made to defend the science of psychiatry as a whole; rather, the expert should state that he is confident of his opinion in this particular case. The cross-examiner may also point out inconsistencies within an expert's report, between his current testimony and previous testimony, and between testimony and published articles.

During cross-examination, the expert should graciously concede points and admit the obvious. For example, when asked "Dr... isn't it possible... " the expert should reply, "Of course it is possible." However, the expert may then go on to point out why it is unlikely. Refusing to concede an obvious point causes the expert to look either foolish or hostile.

After the expert's testimony has concluded, the judge will dismiss the expert. The psychiatric expert should leave the courtroom promptly. The expert should not stop to consult with the retaining attorney or stay to see the remainder of the trial. These activities suggest an excessive interest in the final outcome of the trial.

**Conclusions**

Whether in the role of fact witness or expert witness, the psychiatrist has a duty to educate the court and assist the trier of fact. The legal process should not intimidate the psychiatrist because the psychiatric witness possesses greater expertise in matters of mental health than the other courtroom participants. Thorough preparation is essential before giving testimony. The testifying psychiatrist should bear in mind the importance of striving for honesty, objectivity, and effective communication with the trier of fact. The qualified psychiatric expert who is knowledgeable, well-prepared, and thinks well on his feet may find the courtroom experience an enjoyable challenge.

**References: References**


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