Neil S. Kaye, MD, and Bob Sadoff, MD will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send question to nskaye@aol.com.

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Q. Would you please comment on one expert sitting in during the opposing side's expert's evaluation and/or testimony?

A. Sadoff: We must specify that the expert is on the other side. I have frequently sat in on a colleague's examination when we worked together or when my student or fellow conducted an examination. However, sitting in on an adversary's exam may pose some problems. First, it is best to do so either with an express agreement from the opposing attorney or by court order. We have litigated a case wherein the plaintiff objected to the defendant's attorney sitting in and argued that it compromised the examination. The expert had no difficulty having his own psychologist or student sit in, but believed the presence of the opposing attorney would negatively affect his exam. He cited Bob Simon's article "Three's a Crowd" but acknowledged that his opinion was not affected in several previous cases in which the opposing attorney sat in.

I often prefer to have a respected colleague sit in on my examinations. There are specific cases in which the plaintiff may prefer to have her husband or boyfriend present in cases of sexual harassment at work or a woman who has been sexually assaulted or inappropriately touched by her treating psychiatrist. In one such case the plaintiff, a clear borderline personality disorder, had a senior colleague sit in on the four-hour examination and I was delighted he was present as her "champion". She continually praised him and insulted me during he examination, but worse, she lied about me in court stating that I made inappropriate comments to her and touched her inappropriately. My colleague testified that I did no such behavior and that she was not truthful. She lost her case due to her lies and I was relieved that he was present to witness no harmful behavior.

I have also sat in when a prosecution appointed expert examined a defendant that I had diagnosed as schizophrenic and incompetent as well as meeting he legal test for insanity in that jurisdiction. His exam was thorough and he concluded as I did.

In summary, there is nothing wrong with sitting in on another expert's examination as long as there is authority or agreement and the guest behaves in a professional manner. In some cases it may be therapeutic for the examinee and a decreased risk for the examiner.

A. Kaye: Over the course of my career, it has become increasingly common for me to attend both legal and medical-legal events for both sides of forensic cases. I understand that some of my colleagues (for whom I have great respect) feel the presence of another person in some ways limits the interview, or influences answers. I have never found this to be a problem and welcome the presence of another expert. To me, the former position is a holdover from the old psychoanalytic school of thinking and should be buried.

Some states actually have laws addressing this specific issue. In Delaware, a person has the right to have her/his lawyer or representative present for any evaluation. This would include having a doctor present for another doctor's evaluation.

I have been asked to sit in on evaluations, testimony, depositions, and trials. I have had lawyers, family members, guardians, police/law enforcement officials, physicians, and psychologists sit in on my evaluations. I do have a few rules that I set. The other person must remain silent and make no effort to communicate with the evaluee in any way. I usually sit the other person behind the evaluee so they cannot be seen, an easy and practical approach. The other person must remain present and seated throughout the evaluation so that I am not disturbed. She/he is not allowed to use cell phones, iPods, text, etc. as that could be potentially distracting. The taking of written notes is allowed.

While we all try to do the standard comprehensive assessment, I find that when another expert is present it acts to make me even more sure that I do it all and to an even higher degree. I suspect that I am even more careful about not using leading questions, clarifying statements, getting quotes recorded precisely, etc. I liken it to knowing there is a radar trap around the corner; it makes it even more likely you will keep to the speed limit, even though you are always a law abiding citizen. If the simple presence of one expert acts as a "policeman" to keep the other expert honest, I consider that to be good insurance and well worth any perceived inconvenience.

There are reasons why having a court order to allow this is a good idea, but I don't think it is always necessary. I was in a case where my presence was in part to make sure that the plaintiff (my patient) was not "overly stressed" by the opposing expert. This was an unusual arrangement but due to the court's recognition that this young girl was emotionally fragile, the order allowed me to be present and further specified that I could halt the evaluation, if I felt the process was harmful. Needless to say, no action was necessary. The court order and my presence may have influenced the expert to use a kinder or gentler approach, but it did not prevent a thorough examination in which all the necessary questions were asked.

As Dr. Sadoff noted, having another expert can even be protective. Further, it can be educational for both experts. In fact, one of my fondest moments was

when Dr. Sadoff, employed by the State, sat in on a Daubert hearing, in which I was hired, as a witness by the defense. I was the younger expert. When the great Statesmen came up to me afterward with a big smile, a handshake, and kind words (noting that I went just to the edge of where I could go and then stopped), I knew I had done a good job and had a reason to feel proud.

2. When is it appropriate to comment on an evaluee's credibility?

Neil, with respect to making comments on the credibility of an examinee, It is certainly appropriate if the plaintiff or defendant is a blatant liar. The credibility of the expert is at risk if no comment is made . However, the manner in which the comments are made is important. If one's own attorney's client is untruthful, it is better to convey this opinion to the attorney verbally and the attorney may not wish to have a report of such prevarication. If the credibility of the opposing attorney's client is in question, there are professional ways to express this opinion. I prefer to say the examinee is malingering if that is the case as that diagnosis is a medical term and not a blatant pejorative comment. Clearly, the examiner must give examples to prove his conclusion. If malingering is not the issue, but lying is, one may say in a professional way tat the examinee is exaggerating, using "puffery" or is inconsistent form one interview to the next. One may point out the various tales given without blatantly calling the examinee a "liar." On occasion, a plaintiff may sue the examiner for making such a comment that may inflame the jury. He may not win the suit, but defending any suit is stressful and should be avoided if possible.

To summarize, one must be credible in one's professional capacity in forensic work, even if it means commenting on the credibility of the examinee. It is best to do so in a professional manner and not use pejorative words such as "liar" but medical terms as malingering, manipulative, inconsistent or embellishing. Maintaining one's professional demeanor in such cases will be more effective and reduce risk of harm.