

CHAPTER 2

Beginning with Yourself

For many clinicians, legal processes may seem foreign, intimidating, or frustrating (Cohen, 2022). Clinicians may feel patronized and disempowered by attorneys. Part of a clinician's aversion to participating in court and other legal arenas may be lack of familiarity with legal processes. Some concerns are based on substantial differences between the professional identities, philosophies, and perspectives embodied in the training and experiences of clinicians and attorneys (Melton et al., 2018). To be effective as a witness, it is helpful to understand these professional differences and identify potential sources of frustration, anxiety, or dismay that you may experience with legal processes.

In training for clinical practice, the notion of “conscious use of self” highlights the importance of making deliberate and informed choices about how to present yourself, including what to say, how to say it, and how to convey professionalism through nonverbal behavior. This approach to practice applies whether you are diagnosing a client, performing therapy (Aponte, 2022), or acting as a witness. Just as you *begin with yourself* when working in a clinical practice role (Hunt, 2001), it is also helpful to begin with yourself when your profession takes you into the role of a witness. This reflective process starts with your asking yourself the following:

- What are my *experiences* with the legal system?
- What *attitudes, biases, and triggers* have I developed because of these experiences?
- What are my professional *roles*?

- What *commonalties and conflicts* exist between attorneys and myself?
- What are my *values and ethics* as clinician who may be involved in legal proceedings?

With this awareness and understanding, you will be better able to act and react intentionally to situations where you are in contact with the legal system.

Self-awareness is crucial to cultural humility, helping us learn from the people we are serving while avoiding assumptions or imposing biases (NASW, 2021, s.1.05; National Organization of Forensic Social Work [NOFSW], 2020, s.3.01). We can use critical self-reflection to raise our awareness, reflecting on our own culture, values, beliefs, and worldviews and how they may be impacting our views of, assumptions about, and interactions with others (Van Winkle et al., 2022). When serving as witnesses, self-awareness helps us understand the language, values, rituals, etiquette, attire, and other cultural attributes of the legal system. Self-awareness can also foster a sense of self-efficacy and empowerment. When we can remain calm and poised under stress, we will testify more effectively. When we feel poised and confident, we will come across as more credible and convincing (Melton et al., 2018).

EXPERIENCES, ATTITUDES, AND TRIGGERS

Our values and attitudes toward attorneys and the legal system are shaped by both positive and negative experiences. These experiences can take many forms. A key experience could be a childhood recollection, a relationship with someone working within the legal system, or prior interaction with the legal system in your role as a clinician. From childhood, do you remember images of attorneys as virtuous champions of justice or as self-righteous hawks and victimizers? How have movies and other media affected your views of the legal system? What “horror” and “hero” stories have influenced your views of attorneys? What roles have important people in your life played in relation to the legal system, whether judges, attorneys, victims, experts, offenders, policemen, or mediators? Have you ever been called to testify in court or at a professional disciplinary hearing? If so, how did you feel you were treated?

Many clinicians are unsettled by their entry into the legal system. Attorneys are trained in the art of adversarial exchange. They appear prepared to spend days or weeks on end in the courtroom, battling with their colleagues over legal issues. They challenge, persuade, and argue. They play strategic games with the facts. In the courtroom, attorneys zealously

advocate for their client's position and work hard to undermine the credibility of the other side. When the trial is over, most attorneys shake hands and leave the adversarial spirit in the courtroom.

Clinicians seem to have thinner skin. Most of us are not trained in the art of trial advocacy, nor do we spend most of our professional time in adversarial settings. To many clinicians, trial processes may feel staged, ingenuine, and aggressive (Cohen, 2022). In our clinical practice, we expect empathy, honesty, concern, collaboration, and support from our colleagues. Our ethics and training compel us to be gentle, compassionate, understanding, humble, forgiving, collaborative, vulnerable, and respectful (Hugman et al., 2021; Vaughan-Eden, 2022). Such professional expectations may serve us poorly when we enter legal arenas. At times, we need to adopt Teflon veneers, allowing harsh tones and verbal confrontations to slide off rather than penetrate our sense of dignity and self-worth.

In psychological terms, “countertransference” refers to an unconscious process in which professional interactions with a client trigger feelings in the clinician related to important people or relationships in the clinician's personal life (Nissen-Lie et al., 2022). Clinicians can use self-reflection and supervision to enhance their awareness of thoughts or feelings that may be affecting their work (NOFSW, 2020, s.3.01). When clinicians are aware of their countertransference, they can monitor potential biases and respond more deliberately and effectively as witnesses (Eastman & Rix, 2022). Consider feelings evoked by the legal process that may stem from prior experiences. For example, if Malik has had horrible experiences with authority in the past, he may feel scared, anxious, resentful, or angry when dealing with an authoritative attorney or tribunal (Vogelsang, 2001). Unchecked, these feelings may cause Malik to become unduly passive or, alternatively, argumentative with an attorney. If Frieda identifies with the same racial background as Paula, she may feel a special affinity to Paula. If she is called to testify about the family, she needs to ensure that her affinity does not impair her ability to present evidence in an unbiased manner.

Countertransference could also occur in relation to the substantive issues of a legal dispute. For example, Sam could have unresolved issues regarding childhood experiences of aggression or sexual abuse. If Sam becomes involved in child protection proceedings with the Carveys, he should ensure that his personal feelings do not bias his ability to provide a proper assessment. As a witness, you may feel attacked or pressured by challenging questions during cross-examination. If you respond automatically (without self-awareness and deliberation), you may come across as angry, argumentative, or defensive. Take a breath. Remind yourself that your role is simply to tell the truth—not to be perfect, to win the case, to defend your ego, or to prove you have superior intelligence (Brodsky, 2023).

Personal reflection is just one way to manage countertransference.

Maintaining a personal log or self-check questionnaire may help raise your awareness of how a particular case or dealing with particular legal professionals is affecting you: What feelings does this case evoke in me? Where are these feelings coming from? To what extent are they related to the actual case versus events in my own life? How do they affect my behavior in the courtroom? If the case involves trauma, be aware of its possible impacts. Use self-care strategies¹ to help refuel yourself, build resilience, and lessen the risks of compassion fatigue and vicarious trauma (Garber et al., 2022; Grise-Owens & Miller, 2022). In situations where countertransference may have significant effects on your ability to present as a witness, consider further exploration with a peer, supervisor, trial consultant, or therapist. Ideally, you can deal with countertransference issues prior to taking the stand. In some instances, you may need to deal with countertransference while testifying, for instance, by feigning confidence and masking nervousness or defensiveness (Cramer et al., 2010). After testifying, you may benefit from debriefing with a professional colleague or therapist.

Experiencing countertransference is not necessarily bad. Used deliberately, it can positively affect your performance as a witness. Some clinicians enjoy the attention of being asked for their opinions or advice. They may have aspired to be an attorney at one point in their lives and now embrace the opportunity to participate in legal processes. Other clinicians use their emotion-tinged responses to convey genuine passion and conviction in giving their testimony. Acting as a witness may provide a sense of purpose, helping ensure that truth emerges and justice is served. Clinicians can provide courts with psychological, social, and contextual information that they might not otherwise have an opportunity to consider.

Upon Further Reflection

Think of a time when you experienced countertransference in work with a client. What thoughts and feelings did you have toward the client? How did your countertransference make it more challenging to work with this client? What did you or could you have done to manage your countertransference in a positive manner?

When interacting with attorneys, judges, and others within courts or legal systems, it is important to maintain mindful presence. Similar to when

¹Personal self-care strategies include maintaining good nutrition, sleep, exercise, and balance between work, family, relaxation, and other parts of your life. Professional self-care includes use of clinical supervision, consultation, continuing professional development, and maintaining appropriate boundaries with clients. Mindful breathing, soothing touch, and grounding may be used when experiencing an overactivated nervous system, for instance, when a trauma reaction is triggered while testifying (Stahl, 2020).

we are working with clients, mindfulness helps us to be more deliberative, respectful, and empathic. We can develop mindfulness through strategies such as meditation, yoga, journaling, and breathing exercises. Mindfulness training enhances our capacity for emotional regulation, nonjudgmental presence, and attunement (Turner, 2022). It also helps us manage stressful situations, including conflicts that may arise when working in adversarial environments.

If you have difficulty viewing the attorney's role in a positive light, remember the skills of demonstrating empathy and unconditional positive regard that treating clinicians use to engage with clients (Ivey et al., 2023). How can you understand the attorney, from the attorney's perspective? If you question how an attorney can, in good conscience, represent a killer in a murder trial, consider the attorney's view—the attorney does not see herself as representing a “bad person,” but rather as representing someone with a right to due process and a fair trial, including appropriate legal representation on both sides of the case (Israel, 2011).

ROLES

In prototypical adjudicative processes, the primary issue to be decided is whose version or interpretation of the facts is to be believed as the truth. From this determination, the adjudicator can decide the appropriate disposition or remedy. An effective witness in this adjudicative process is someone who communicates facts and opinions about those facts in a credible manner. A credible witness is someone the adjudicator is likely to believe. Qualities that tend to convey credibility include openness, honesty, impartiality, trustworthiness, respectfulness, likability, knowledge, and confidence (Brewer & Douglas, 2019). To be an effective witness, one must not only possess these qualities but also be perceived to possess these qualities. Credibility as a witness is akin to one of the core conditions of clinical practice, that is, genuineness (Ivey et al., 2023). Professional clinicians know that, to be effective, they need to convey honesty and authenticity—otherwise, they cannot develop a positive working alliance with their clients. Similarly, clinicians cannot be effective witnesses unless they develop relationships based on credibility with the decision maker(s).

Lay witnesses may be provided with one or two pages of tips on how to be an effective witness. So why does a clinician need a whole book? In one sense, clinicians already have an advantage because honesty is a professional ethic and clinicians are practiced in the conscious use of self. *Being credible* does not seem that hard. In the legal system, *being* credible is not enough. You must be *perceived* as credible. This is where the adversarial nature of the legal system sometimes confounds well-meaning clinicians.

The legal system presents many challenges to clinicians. On the one hand, during direct examination, the court is interested in obtaining a description of the facts as you know them. After you complete your direct examination, however, there is an opportunity for the other side to ask questions. This cross-examination is aimed at undermining your testimony from direct examination or making that testimony seem less credible. Further complicating matters are the multiple roles that clinicians play and the variety of proceedings with which clinicians may be involved. While the temptation to seek a simple cookbook-style recipe for being an effective witness is great, your experience in legal proceedings can be much more influential and fulfilling if you take sufficient time and care to become an informed and intentional participant.

A vital first step in becoming an intentional witness is to identify your roles. Some roles may be *required*. Others may be of your choosing, based on professional and personal preferences. Consider Frieda and Sam. Frieda is a family therapist who works in private practice with voluntary clients. Frieda has no ongoing relationship with legal systems. Sam is a social worker in a forensic setting. He is directly involved with the child protection system. Although their roles as clinicians and witnesses have some similarities, significant differences also exist.

As clinicians, both Frieda and Sam likely view themselves as helping professionals, agents of change, and advocates for their clients. While Frieda operates in private practice and determines her own role, Sam works in the context of an agency mandated to safeguard children from abuse and neglect. Child protection laws and agency policies suggest that Sam's role is not only to provide the child and family with psychosocial services, but also to document evidence of child abuse or neglect and be prepared to present it to court should the need arise (Crosson-Tower, 2018). Accordingly, Sam must be aware of his dual role and the conflicts that arise when voluntary interventions are insufficient to ensure a child's well-being. Given these contexts, Sam and Frieda have significantly different orientations toward the legal system. Their orientation affects the way they keep records, their relationship with attorneys, their obligations regarding confidentiality, and how they present evidence (Wittmann, 2022).

As a parenting plan evaluator, Evelyn has been appointed by the court to gather information from multiple data sources, form her opinions, and present a report. She is a forensic expert. Her role is to provide a neutral, objective assessment. Evelyn is not an advocate for Philip or Paula. She should neither provide therapy to nor mediate with Philip and Paula. Engaging in dual roles or relationships could compromise her role as an evaluator (AFCC, 2022, s.3.2; APA, 2017, s.3.06; NASW, 2021, s.1.06). However,

the manner in which Evelyn conducts her evaluation may have therapeutic effects. For instance, the way she drafts her evaluation could include conciliatory language and highlight the strengths of each parent. If family members have experienced trauma, she can use trauma-informed care to ensure that her evaluation does not exacerbate their trauma (Brodsky & Goldenson, 2022). The lines between therapy, mediation, and evaluation are not always clear (Barsky, 2017). Still, reflective practitioners should be aware of the boundaries that their role entails, including an understanding of role limitations that could affect the scope of their testimony and preparation for court.

COMMONALITIES, CONFLICTS, AND MOVING BEYOND

Although clinicians and attorneys often feel at odds with one another, they share a substantial set of values and methods. Attorneys and clinicians have common interests in client rights, access to services, advocacy, and justice. Although their definitions and modes of implementation may be different, their ethical commitments are similar. For example, both disciplines seek to educate others about political and human issues. Both endeavor to influence people with power to protect the interests of minorities, victims, and the disadvantaged (ABA, 2020, Preamble; APA, 2017, Principles D and E; NASW, 2021, Preamble).

Evelyn might find it personally gratifying that her assessments influence important decisions about Debra's welfare. Acting as a witness in one proceeding not only affects the welfare of an individual client but also can have much broader policy implications and affect the lives of many other people. If Evelyn were to provide convincing information about research pertaining to identification of child alienation, for instance, this research could establish a precedent affecting how child protection authorities handle future cases. Clinicians may take pleasure from work in legal processes because of personal interests. Frieda may enjoy public speaking. Sam may enjoy working with Alice given his admiration for attorneys portrayed in popular movies or television shows. Evelyn may take satisfaction from responding well in a cross-examination, demonstrating that her family evaluation was well founded. Clinicians may even find that their experience in legal proceedings provides them with new insights to take back to their clinical work (Madden, 2003).

Clinicians use a different set of skills and orientation to function effectively in adjudicative processes. However, some traditional attributes of clinicians are helpful in pursuing alternatives to adjudicative processes. If Malik uses his mediation skills effectively, he can help the parties resolve

their conflict over parenting arrangements on a consensual, amicable basis. If Evelyn produces a sound evaluation, Alice can use it to negotiate the terms of a separation agreement. A clinician's communication skills will be beneficial in all types of legal proceedings.

Unfortunately, not all clinical approaches are easily transferable to legal processes. Involvement in adversarial proceedings is not necessarily easy or gratifying. You may feel that a court process focuses too narrowly on technical legal issues, not paying sufficient regard to people's feelings, culture, or social circumstances. You may feel anxious because your work is being put on trial. You may feel ridiculed or demeaned by how attorneys question you. You may become frustrated with the legal process due to lack of control over it (Cohen, 2022). If you see your role as a case manager or facilitator, legal proceedings can usurp that role. As a witness, you may find that you cannot act as an advocate or helping agent for your client. Because attorneys tend to control legal processes, you may feel that your role is diminished to that of a "puppet" of the attorney calling you to testify (Melton et al., 2018). You may not have time for the legal requirements of documentation for day-to-day record keeping and court proceedings. Delays within the justice system and the stress of legal proceedings may weigh heavily on you and your client. You may not be properly compensated for your time. The language used by attorneys may sound obscure or convoluted (Cohen, 2022). You may feel frustrated because attorneys never seem to provide straightforward advice, couching their responses with "It depends" or "I would need more information." Your participation in controversial legal disputes can bring negative responses from colleagues or clients. You may even be followed down the street by a journalist researching a current case, only to be vilified in the local news or on a YouTube video gone viral. Some of these issues can be managed once you understand them. Others have no easy solution. Again, remember to breathe.

The relationship between a clinician and attorney is often either a love or hate relationship, depending on each person's personal as well as professional experiences with one another. Certainly, the legal profession comprises ethical and unethical, competent and incompetent practitioners; likewise for mental health and related professions. As a potential witness, you may have the opportunity to forge successful working relationships with like-minded attorneys, but you will need to learn how to work with the full gamut of possible attorneys to effectively fulfill your roles as clinician and witness.

The following discussion outlines six conflicts between legal and clinical approaches, offering suggestions for how a clinician can deal with these conflicts.

Adversarial versus Collaborative Approaches

Clinicians work collaboratively with client systems to resolve problems in ways that foster self-determination. While attorneys work collaboratively with their own clients, adjudication uses an adversarial process that pits one attorney's client against another's. Adjudication generally results in win-lose outcomes. Decision-making authority is placed in the hands of a judge or third-party decision maker, rather than the client or the clinician. Incarceration for criminal activities and involuntary committal to a mental health facility exemplify the extent to which legal systems can interfere with self-determination. Whereas attorneys have traditionally embraced a rights orientation, clinicians tend to be more relationship-oriented.

If you provide testimony that conflicts with a client's wishes, your working relationship can be hurt or even severed entirely. However, providing evidence may not be, in and of itself, the problem. Several other factors contribute to the impact of testifying. Have you clearly identified your role to your client and the possibility that you could be called to testify? Has the agreement about your role been put in writing and then signed by both you and your client? Have you properly identified the limits of confidentiality? Are the limits of confidentiality clearly described in an informed consent form signed by you and your client? Have you and the client already tried to resolve matters through less formal and adversarial means? Did you make real-time accurate notes about these discussions and the options proposed to avoid litigation?

If you are required to present evidence at a hearing, the way you do so is all-important (see Chapter 5). When caught up in the adversarial spirit of a proceeding, clinicians may end up presenting information in a divisive, provocative, or aggravating manner. Even though the legal process has adversarial components, clinicians are normally most effective as witnesses when they provide balanced, matter-of-fact information. Evelyn's written assessment will be more influential in a legal proceeding if she focuses on objective facts. "I heard Paula say that she would not allow Philip to have access to Debra; then Philip told Paula he would kidnap Debra" is a more influential statement than "Philip cannot be trusted because he plans to abduct dear, sweet Debra." Through direct and concrete statements, clinicians are more credible not only to the decision maker, but also to the client, both of whom may sense greater objectivity, truth, and respect in the information provided.

In some situations, clinicians use the authoritative nature of legal processes to facilitate therapeutic change (Barsky, 2017; Korpinen & Pösö, 2021). For example, child protection workers such as Sam can use the authority of the court as part of a planned intervention to protect Debra from parental abuse. Although clinicians prefer to work with clients on a

voluntary and consensual basis, limits on self-determination exist when there is risk of serious harm to the client or others (Barsky, 2023). Some clinicians who work with involuntary clients feel that they, the clinicians, have too much authority; others feel they have too little.²

Upon Further Reflection

Have you ever used the authority of a court or other legal process to facilitate change with one of your clients? If so, what justified your use of going to court? If not, please think of a situation in which you believe using the power of a court to initiate change with a client might be ethically justified? How do the principles of client self-determination, safety, and promotion of the client's well-being factor into your decision making?

As a clinician, temper your authority and strive to work with a client on a more consensual basis by negotiating a voluntary plan of action prior to going to court. If you cannot reach an agreement with the client, try to help him understand his emotional reactions to the legal consequences of his actions so that he can make informed choices about how to respond. You can also help your client think through different options and how those options might have very different emotional consequences for him.

You cannot and should not interpret legal decisions for your client or provide legal advice. When clients request legal advice, refer them to an attorney. However, it is appropriate to help your clients develop better understandings of their feelings about different legal options. You may also be helpful in guiding your clients to ask questions of their attorney to clarify their understandings of the legal consequences of their decisions.

If you are going to be a witness in a case involving your clients, explain your role to them as early as possible.³ To the extent that you are honest

²Court-mandated clients include people ordered into treatment due to concerns about child abuse, mental health (suicidal or homicidal ideation), drug use, intimate partner violence, or other violent behavior. In some cases, clients are not formally ordered into treatment, but enter treatment under various levels of pressure from the court (e.g., agreeing to treatment in order to avoid a stiffer sentence, agreeing to treatment to be diverted from court, or agreeing to treatment as a condition of probation or parole). Clinicians should be vigilant in explaining their legal and ethical responsibilities to involuntary clients. On the one hand, clinicians are ethically obliged to honor a client's right to self-determination. If a client resists or terminates treatment, however, the clinician must also manage concerns about community safety and adhering to the court order.

³While this is good practice for all clinicians, it is specifically required for psychologists by the Specialty Guidelines for Forensic Psychologists. The Specialty Guidelines advise psychologists to properly inform clients about the possible use of information from the therapy relationship in a legal context as soon as it becomes clear that the information may be used in such a context (APA, 2013, g.6.01).

with them up front, they will be able to make better informed choices about whether and how to cooperate with you. Furthermore, they will not be surprised if you raise evidence against their preferences.

Clinicians representing clients from vulnerable or disadvantaged groups may find the legal system particularly oppressive. They may be concerned about the negative impact of an adversarial process on their clients or find that the law contains systemic biases. For example, some domestic violence clinicians who work with abused women or children find that criminal procedure favors the rights of the accused over the rights of their clients. Accordingly, such clinicians may be reluctant to cooperate with the legal system. Conversely, some clinicians who work with men accused of perpetrating violence might be reluctant to support the legal system because they believe there is bias favoring the rights of alleged victims over the rights of alleged perpetrators.

Certainly, problems do exist. Clinicians can play a significant role in challenging injustices and advocating for change within the limits of their professional roles. However, before a clinician decides not to cooperate as a witness, she needs to be aware of the potential consequences of taking certain actions. In the extreme, refusing to cooperate can result in charges of obstructing justice or contempt of court (e.g., Crimes and Criminal Procedure, 2012). If faced with this issue, weigh the risks and benefits of refusing to participate in the process against the risks and benefits of cooperating. Consult your profession's ethical standards and codes of conduct and seek the advice of colleagues. You may need to consult with not only your personal attorney but also an attorney well versed in the type of law related to your case. Local attorneys and forensic clinicians can also explain the informal rules of professional conduct within your community. When working in an agency context, consult with your supervisors, seeking their support for your stance.

Note that within many areas of law—particularly family law—there has been a movement within the legal profession toward collaborative law. Under this paradigm, attorneys are trained to use cooperative negotiation and problem-solving skills to help clients resolve their concerns without having to go to court (Hoffman & Schepard, 2020). Thus, clinicians may have very different experiences when working with attorneys who embrace collaborative versus adversarial approaches (see Chapter 10 for alternatives to adjudicative processes).

Rules versus Fairness

Clinicians often see legal processes as rigid and formal. Attorneys view the rules and structure of these processes as necessary to ensure that the process is predictable and fair. Even when procedural justice is fulfilled

in a legal sense, clinicians may see the results of certain cases as unfair and blame bad decisions on legal technicalities. For instance, why should a person who steals be acquitted just because police did not follow proper protocols for gathering evidence?

To some extent, the conflict between rules and fairness is illusory. Legal rules are designed to create a fair process. For example, rules about who can present what evidence and how it should be presented may seem to be unduly restrictive to someone unfamiliar with legal processes. While an attorney may seem overly compulsive about details, certainly some degree of precision is needed to ensure fairness. The better that clinicians understand the reasons for the rules, the more likely they are to perceive the rules as fair. However, in some situations, legal processes are indeed too rigid and formal for the problems that need to be resolved.⁴

Once again, clinicians must decide whether to abide by the rules or challenge them. If you decide to challenge some rules in the legal system, I encourage you to challenge them in a manner consistent with the rules of law. That is, find a way to issue your challenge in a manner that shows respect for the system. For example, there are ethical standards as well as professional practice guidelines about how to handle judicial requests to release raw psychological test data. You may challenge a court order to release the raw data by seeking to educate the judge about your profession's ethical constraints placed on their release. You may also offer useful alternatives to the court's directive that may help the court to seek a path that avoids the tension between your ethical concerns as a clinician and the litigant's right to due process and a fair trial.

As a witness, you may find that you have little control over the process but that cooperating with authorities is nonetheless more appropriate and ultimately more constructive toward achieving your long-term goals. Making long-term systemic changes will probably require that you participate more actively in public policy and law reform processes.

Facts versus Subjective Meaning

When providing counseling or therapy, clinicians often focus on the subjective experiences of their clients. They understand that psychology and social sciences are imprecise. They learn to accept ambiguity, complex interactions, and uncertainty as fundamental to their work. The courtroom is looking for objective evidence, linear causal relationships, and predictions of behavior that can be made with a high level of certainty. When

⁴In family law and child welfare cases, for example, clinicians may prefer mediation, family group conferences, or other alternative dispute resolution processes designed to take relational and emotional issues into account.

working together, attorneys and clinicians must learn how to bridge these differences (Melton et al., 2018; Venables & Walsh, 2023).

Adjudicative processes require objective criteria to prove the existence of hard facts and to support particular assessments and recommendations. In a murder trial, for instance, the primary issue may come down to a specific factual question, “Did the accused know what they were doing when they caused the killing or were they acting in response to hallucinations due to psychosis?” From a clinician’s perspective, there may not be a simple explanation of the accused’s behavior, but rather, a complex set of factors affecting their conduct. Some clinicians have been accused of having difficulty in distinguishing between fact and speculation. While clinicians use objective criteria for psychological and social assessments, they also employ “soft” information and subjective opinions. *What happened* is important to attorneys. They are seeking truth in an objective sense. In contrast, *the meaning that clients attribute* is important in most clinical processes. From an attorney’s perspective, this type of orientation can render a clinician a poor investigator and witness. To avoid interprofessional misunderstandings, clinicians need to understand the differences in educational experiences, professional culture, language, and perspectives between attorneys and members of their own profession (Cohen et al., 2022; Venables & Walsh, 2023).

How comfortable a clinician feels with legal processes partially depends on the theoretical framework she brings to clinical practice. Clinicians who employ behaviorism define problems and goals in observable behavioral terms. Behaviorism has a strong history of inquiry using experimental designs. This empirical approach fits well with the needs of an adjudicative process. Cognitive approaches to clinical practice also correspond well with the rational thought processes used in legal argument. In contrast, many psychoanalytic interventions are based on abstract constructs that have less experimental research to support their validity. This makes it difficult to use psychoanalytic concepts for evidentiary proof. Similarly, clinicians who use a medical model of practice may adjust to traditional legal processes more easily than clinicians who use person-centered, social systems, or postmodern approaches to practice (Hickman, 2017). Using a medical model, the clinician functions as an expert who can provide a specific diagnosis and prescription for treatment. In contrast, clinicians who use person-centered approaches to practice may have difficulty providing concrete information needed by the courts. For example, person-centered clinicians view clients as expert in their lives, which results in avoiding the use of labels, diagnosis, or prescribing for the client.⁵ Any request for

⁵For further information on psychosocial theories and frameworks that inform clinical practice, see Corey (2020).

testimony about a client's current functioning against the standard of the DSM-5-TR (American Psychiatric Association, 2022) may present dilemmas for such clinicians because they do not typically use diagnostic criteria and therefore may not be expert in their application to specific clients.

Some methods of research and critical thinking fit better than others with adjudicative processes. Adjudicative decision making requires parties to provide proof of particular facts (Weaver, 2019). Accordingly, quantitative research that studies the causal relationships between phenomena fits particularly well. In quantitative research, researchers begin with a hypothesis and design a study to test the truth or validity of that hypothesis. Statistical analysis can help to identify the specific probability of particular events. In contrast, judges might question the reliability of findings from qualitative research because this methodology lacks the basics of generalizability found in experimental designs (e.g., large, random samples, pre- and posttests, control groups). For qualitative research to be accepted as persuasive evidence, a clinician may need to demonstrate methods for ensuring its reliability and relevance.⁶ Interviewers who are trained to conduct qualitative interviews, for example, will know how to ask questions in a way that limits the effects of their biases on the information provided (Denzin & Lincoln, 2017). Arguably, both narrative and anecdotal evidence fit very well with the common law, which is, after all, a series of narratives or stories of what happened to real people.⁷

How clinicians operate in their clinical roles need not limit their ability to serve effectively as witnesses. Frieda, for example, uses a narrative approach to family therapy, emphasizing the clients' own subjective meanings of their experiences. If Frieda is admitted as an expert witness, she is not limited to this perspective. She can also testify about interpretations from her clinical observations and from other objective data she has gathered. Alternatively, Frieda could decide she does not want to be a "good witness." Because Frieda was not hired by her clients to provide information to the court, she may specifically decide not to gather objective information about her clients, thus discouraging them from calling her as a witness. If she is called, any information she possesses may be of little value to the adjudicative process.

⁶In qualitative research terms, the concept of "trustworthiness" is used to embrace the quantitative concepts of reliability and validity.

⁷Case law and qualitative research both use inductive reasoning, exploring the facts or experiences in individual cases, and moving from the specific to the general. Court decisions are made on a case-by-case basis, but attorneys and judges also look for principles that can be derived from each case and applied to similar cases. Grounded theory (a particular form of qualitative research) also explores individual experiences to inform theories that may be transferable to other situations (Denzin & Lincoln, 2017).

Conflicting Roles

A clinician's legal and ethical obligations are defined by relevant laws, professional codes of conduct, service contracts, and agency policies (Barsky, 2023; Corey et al., 2019). Thus, it is crucial for clinicians to know which laws, codes of conduct, contracts, and agency policies apply to them, and in what circumstances. For instance, mental health professionals should comply with the privacy provisions of the Health Insurance Portability and Accountability Act (1996). Psychologists are expected to abide by the Ethical Principles of Psychologists and Code of Conduct (APA, 2017). Forensic psychologists are guided by the Specialty Guidelines for Forensic Psychologists (APA, 2013). Social workers also have specialty guidelines for forensic practice (National Association of Forensic Social Work, 2020). All clinicians are expected to follow their agency's policies, contracts, and procedures. In some instances, particularly when a clinician is playing more than one role, these laws, codes of ethics, contracts, and agency policies may conflict.

Consider a situation in which a clinical social worker is compelled by a court to testify in a case where her client has been accused of a crime. As a clinical social worker, she is supposed to focus on her client's well-being, honor her client's right to self-determination, and protect her client's right to confidentiality (NASW, 2021, ss.1.01, 1.02, and 1.07). When the social worker is compelled to testify against a client, she is supposed to tell the truth—the whole truth—and not just what the client would like her to say. As a witness, the social worker may not be able to honor her client's wishes and interests. Similarly, if a court asks a clinician to investigate or monitor a client, the clinician will find it difficult to maintain the client's trust, a core condition for maintaining a therapeutic alliance. The role boundaries involved in such work are often difficult to navigate. This is why clarifying the boundary issues between being both a treating clinician and a witness is critically important (Bush et al., 2020). Ordinarily, clinicians should avoid multiple forms of relationships with clients due to potential conflicts of interest (APA, 2017, s.3.05; NASW, 2021, s.1.06). In some cases, such as when clinicians are compelled to testify, multiple relationships are unavoidable. In such instances, clinicians should clarify their role expectations with the client and take reasonable steps to ameliorate potential ethical conflicts, including challenges to confidentiality, informed consent, and self-determination.

Another potential conflict arises with respect to self-disclosure. As treating practitioners, clinicians are taught to maintain professional boundaries and limit self-disclosure. As witnesses in a hearing, clinicians may be required to answer personal questions. For instance, attorneys may ask clinicians for their personal views on abortion, gun control, child rearing,

sexuality, racism, or whatever else may be pertinent to the case. When clients learn personal information about their clinicians based on their testimony, this could have negative effects on their clinician–client relationship.

Given the potential for conflicts between the roles of clinician and witness, clinicians must decide whether to maintain both roles. When a clinician is called as a witness, she may need to discontinue service and refer the client to another clinician. For example, if Paula sues Frieda for malpractice, Frieda's attorney may advise her to terminate services with the Carveys. Frieda still has an ethical obligation to ensure the family has access to services (APA, 2017, s.3.12; NASW, 2021, s.1.16). It may be prudent, for instance, to refer the Carveys to a clinician who is not involved in the court case. In cases where you are not being sued but are involved in the client's legal situation as a witness, you may need to consult with colleagues and your state licensing board to determine the best course of action. Remember, even when you agree to testify for your client, you may be asked to disclose information about your client that you are not prepared to openly discuss. Despite your best intentions, once you take the stand, your full file is open to scrutiny by the attorneys and the court. It may become part of the public record. Moreover, you may be asked questions that reveal aspects of your client's behavior that were not expected to become public. Any time that you act as a witness for a case involving a therapy client, you may unintentionally do damage to your relationship with the client because of information that you may be compelled to reveal once you are on the stand.

When treating clinicians act as witnesses, one of the most challenging issues is whether to conduct themselves as advocates for the client's wishes or as objective observers. In adjudicative proceedings, you will be seen as most credible if you present yourself in an impartial manner. This may sound paradoxical but, as a treating clinician, you should ordinarily convey to the court that your understanding of the issues is drawn primarily from your client's perspective⁸ (Bush et al., 2020). You may also discuss how, as a result of this one-sided influence, you have formed specific beliefs about your client and his understanding of the issues. Such disclosures about your potential biases convey honesty and integrity. Furthermore, you may indicate openness to additional information from other sources that might shed light on aspects of your client's situation that were not presented during therapy.

How you present your evidence is important. You can advocate and still be viewed as open to new information. Such advocacy may increase

⁸Forensic evaluators may present their client's subjective perspectives, but they are also expected to use other information and formulate more objective opinions to present to the court.

the court's view of your credibility. There are other forms of advocacy that come across as biased, rigid, and righteous. To illustrate, consider a psychiatrist who is known as an advocate for the rights of people with schizophrenia. The psychiatrist believes that, with proper medication and supervision, a particular patient will not pose a risk to self or others and should be released from a mental health institution. To make this point in a credible manner, the psychiatrist could say:

"I have diagnosed this patient personally and I have listened to the views of the other mental health professionals who have testified at this hearing. I understand that they are concerned about his history of setting fires. During the past 2 weeks, under my medical supervision, the patient has been cooperative with his medication regimen. His auditory hallucinations have ceased. If he continues to comply with treatment, he will not have the type of hallucinations that prompted his fire-setting conduct in the past."

Contrast this approach with the following:

"The so-called professionals who testified against my patient do not know what they are talking about because they haven't been working with him. This patient's right to autonomy has been violated by keeping him imprisoned against his will. He poses no threat to anyone and must be allowed to live in the community."

If the psychiatrist shows rigid and righteous bias toward a particular client, her testimony will be given little weight. She may even damage her own professional reputation.

Ethically challenging issues arise when you are asked to provide testimony that the client may view as against his wishes or interests. When asked to provide such testimony, you may feel as though it is a betrayal of your client (APA, 2017, s.3.06(a); NASW, 2021, s.1.01). You and your client should discuss his feelings about your upcoming testimony. It may be useful to talk about different scenarios that may play out in court, such as a hostile cross-examination that reveals testimony that was never intended to be divulged. Explaining these possible situations with your client may help the client accept your role in court and clarify in your own mind the appropriateness of your agreement to testify.

In the Carveys' case, assume Debra's school guidance counselor has been asked to provide testimony at a parenting plan hearing. The counselor feels sympathetic toward Debra. He struggles with how he could say anything that might put Debra's wishes at risk. Debra has told the counselor that she wants to live primarily with her mother. The counselor has

concerns about Paula as a parent, however, as Debra has had many unexcused absences from school on days she was in Paula's care. The counselor is concerned that Paula encourages Debra to feign illnesses or other excuses so she can spend more time with Debra. Prior to being called to testify, the counselor lets Debra know that he will put forth Debra's wishes, but he will also need to state concerns about Debra's absences. The counselor also informs Debra that it is the judge's responsibility to make the final decision about what parenting arrangements are in Debra's best interests. In situations such as the one just described, your testimony may be in the client's or community's best interests, even though it is not the type of information the client wants to hear.

In contrast to purely adjudicative proceedings, in political or legislative proceedings, "acting as an advocate" may be highly appropriate. In fact, acting as advocates may even be the normal expectation in such contexts (Lugo et al., 2022). If a group of clinicians was advocating for the rights of people with disabilities, for instance, legislators might be persuaded by their dedication to their clients' interests.

Dilemmas may arise because of conflicting legal and ethical obligations. The code of ethics for your professional association may censure what you are asked to do as a witness. Suppose that a psychological association has a policy supporting a woman's right to choose regarding abortion care. Would it be ethical for a psychologist to provide evidence in a case that supports a pro-life perspective? In other circumstances, a clinician may receive an unethical request from an attorney. Alice could ask Evelyn not to report certain information that hurts her client's case. Although Alice is not specifically asking Evelyn to lie, is Evelyn obliged to report full and frank information? Such dilemmas have no easy answer. They depend on the clinician's role and professional obligations. If Evelyn were hired by Philip's attorney to conduct an assessment, her obligations under attorney work product rules would be different than if she were appointed by the court or hired jointly by Philip and Paula (for further discussion of work product rules, see Chapter 7). If Philip rather than Philip's attorney hired Evelyn, her obligations would also be different, as Evelyn's primary client would be Philip.

Rights versus Therapeutic Goals

Legal education teaches attorneys how to assess and defend the legal rights of individuals, whereas education for mental health professionals focuses on helping clients achieve therapeutic goals (e.g., managing mental illness, improving social functioning, enhancing communication, and coping with stressful life events). It would be erroneous to suggest, however, that attorneys focus only on rights and clinicians focus only on therapeutic goals.

For instance, clinicians have ethical obligations to promote justice for the people they serve (APA, 2017, Principle D; NASW, 2021, Part 6). To promote justice, clinicians can benefit from having a practical understanding of legal rights and processes. Law schools also take a broader approach to legal education, teaching students oral communication, problem solving, interviewing, conflict resolution, cultural competence, and other skills related to serving clients in a real-world context (American Bar Association Section on Legal Education, 2022, s.302). The notion of “therapeutic jurisprudence” suggests that judges, lawyers, and other legal professionals should use legal processes to heal relationships and foster psychosocial well-being; they should avoid actions that are harmful or anti-therapeutic (Brodsky & Goldenson, 2022; Healy, 2021). Still, some clinicians believe that attorneys focus too much on rights, taking insufficient account of the emotional effects and broader psychosocial impacts that legal cases have on individual clients, families, witnesses, and the broader community (Cohen et al., 2022).

Both clinicians and attorneys believe people should take responsibility for their actions. This principle often manifests differently in the preferred methods of the two professions. The foci of the traditional criminal justice system, for example, are retribution and protection of the public. If someone commits a wrong, retributive justice demands that she be punished for her action. Punishment is also used to deter or prevent further criminal acts. Although rehabilitation plays a role in the system, clinicians frequently note that the rehabilitation aspect of the system is undervalued. If a clinician believes an individual needs therapeutic treatment or has been deprived of a supportive social environment, she may sympathize with the individual. To advance these concerns in legal processes, a clinician may need to translate them into language that fits a legal framework. Sam might believe Philip’s abusive behavior is the result of mistreatment in his own upbringing. In a traditional court trial, however, the law does not view disadvantages in one’s upbringing as an excuse for behavior. If a person committed a crime, he is guilty of that crime regardless of having experienced child neglect, deficient schooling, poverty, or other life challenges.⁹

Fortunately, the criminal justice system has expanded beyond its traditional goals of punishment and deterrence (Restorative Justice Exchange, n.d.). Although the availability of restorative justice processes varies across the United States, some criminal justice systems now include community courts, mental health courts, victim–offender mediation, restorative circles, and other problem-solving alternatives for those who meet certain criteria (e.g., this is their first offense). These approaches tend to fit better

⁹The court may consider the person’s challenges and disadvantages during the sentencing phase, as mitigating factors, when determining an appropriate sentence.

with the values and perspectives of the mental health professions, including *compassion*, respect for the dignity and worth of all people, individual and community empowerment, holistic intervention, and enhancement of human relationships.

Lack of Respect

The final area of potential conflict stems from disrespect between attorneys and clinicians. Lack of respect may result from ignorance or negative experiences with individuals in the other profession. For instance, Alice may have had difficulty with a psychologist as a witness in a prior case. Evelyn may view attorneys as “hired guns,” determined to defend their clients and win at all costs. Resentment and disrespect may also arise from differences in status and pay between the two types of professions. Disrespectful behavior is sometimes an intentional strategy, such as when an attorney uses intimidation to discredit a witness, “forgets” to provide the clinician with significant information, or sends threatening letters. Ethically, both attorneys and clinicians have a duty to show respect for other professionals and, in fact, for all individuals (ABA, 2020, Rule 4.4; APA, 2017, Principle E; NASW, 2021, Preamble). Despite negative clichés about attorneys, the legal profession does promote honesty, integrity, respect, and other ethical principles similar to those in the mental health professions.

Extreme cases may require that you report unethical behavior to your state’s law society. However, your customary clinical strategies can be used to defuse most situations: active listening, time-outs, identifying mutual concerns, constructive confrontation, nonjudgmental assertiveness, meeting the attorney halfway, and using “I” statements to indicate what type of treatment you prefer. This does not mean providing therapy to the attorney—regardless of whether the attorney could use it.

Consider an attorney who shows little respect for social workers. The attorney may see social workers as well-meaning and charitable but as having little training or expertise. If the social worker becomes defensive and loses his temper with the attorney, this behavior reinforces the attorney’s stereotype. If the social worker tunes in to the reasons for the attorney’s treatment, then the social worker may be able to engage the attorney in a constructive manner. For example, the attorney may not know the extent of the social worker’s knowledge and skills, or may believe anyone can practice social work. The social worker can address these concerns by providing information about his educational background, standards of practice, specific areas of expertise, and the science behind social work. Being certified or licensed by a social work association can raise the social worker’s standing with legal professionals. Having your own attorney present also reduces the likelihood of being treated with disrespect.

In some instances, clinicians perceive disrespect from attorneys even when attorneys do not intend to be disrespectful. Consider an attorney in a mental health hearing who is cross-examining a clinician about the risk of suicide. The clinician testifies that the subject of the hearing is at high risk. The attorney questions whether the clinician offers this opinion with 100% certitude. The clinician may interpret the attorney's questions as nitpicking, embarrassing, or disrespectful because nobody can predict suicidality with such precision. The attorney may not have intended to embarrass or disrespect the clinician, but rather, intended to establish doubt about her client's need for involuntary committal. As attribution theory suggests, clinicians (and all people) should be careful about attributing unsavory motives when they feel disrespected or hurt by others (Barsky, 2017).

CONCLUSION

Knowledge and experience can alleviate anxiety and provide a greater sense of control when you are involved in legal proceedings. In some situations, acting as a witness will be smooth and straightforward. Awareness of potentially difficult situations is the first step in preparing for worst-case scenarios. If you have had negative experiences with legal processes, take steps to ensure that they do not interfere with your ability to be effective as a witness in the current situation. If you can develop a balanced view of the strengths and limitations of legal processes, then you will have an easier time working in these contexts. If you have taken the time to reflect on the legal system and still do not respect its processes, rules, or values, then your participation will be more difficult. Although you may decide to take a stance or advocate for change, choose your battles—and their timing—wisely.