**Instructors ManuaL**

**for “Clinicians in Court”**

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# Introduction

Thank you for considering “Clinicians in Court” for your course. “Clinicians in Court” was originally designed as a book for professionals who were already in practice. Feedback on the first edition suggested that it was also being used as a course textbook and that it would be useful to provide instructors with additional teaching materials, including discussion questions, experiential exercises, assignments, test questions, and PowerPoint slides.

This online Instructors’ Manual is intended to provide you with guidance and suggestions for using “Clinicians in Court” as a textbook. I hope you will find this textbook to be a practical resource for students wanting to learn more about the complexities of the legal system, and how to carry out their roles as witnesses in an ethical and effective manner. When teaching, feel free to add your own stories and experiences, as well as those of guest speakers. Your stories will help students relate to the local context, as laws, regulations, policies, judicial attitudes, and attorney practices vary significantly from region to region.

This textbook may be used for a number of different courses, as discussed under the heading, “Using this Textbook for Various Types of Courses.” The other headings are based on Chapter titles. For each chapter, I provide suggestions for teaching, facilitating discussions, and implementing the exercises. I also provide PowerPoint presentation and test bank for each chapter.

If you have suggestions for additional materials or revisions to the textbook or this Instructors’ Manual, I welcome your feedback. Please feel free to email me at [barsky@barsky.org](mailto:barsky@barsky.org). Also, feel free to check my website at [www.barsky.org](http://www.barsky.org) for additional information and updates.

To use the Instructor’s Manual and PowerPoint Slides, click on the relevant headings below and save the files to your computer’s hard drive. The Instructor’s Manual begins with a “Table of Contents” that allows you to navigate through the document by clicking on various chapters and topics.

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# Using this Textbook for Various Types of Courses

This textbook may be used for various courses, including undergraduate courses, graduate courses, and continuing education. It may also be used in a range of professional programs, including criminal justice, child welfare, social work, psychology, human services, marriage and family therapy, mental health, and forensic practice. The textbook uses examples from many contexts of practice, so you may focus on examples that relate most specifically to the contexts that are most relevant to your students (e.g., criminal court for criminal justice students, mental health proceedings for students working with clients who may require involuntary admission to mental health facilities, family court for students working with separating couples, or child welfare proceedings for students working with children at risk or child abuse or neglect). Even if students expect to work primarily within one type of court setting, it is useful for them to have a basic understanding of the similarities and differences between court settings.

## Undergraduate Courses

Undergraduate courses may include Social Work and the Law, Mental Health Law, An Introduction to Criminal Justice, Child Welfare, or other courses introducing students to particular legal systems. At a minimum, undergraduate courses should provide students with a basic understanding of the legal system, including knowledge of the court structure, the roles of different professionals within the legal system, and legal concepts such as confidentiality, privilege, evidence, and rules of civil or criminal procedure. If your course does not focus on a particular area of law, one area that you could highlight is malpractice. Regardless of a student’s intended field of practice, understanding malpractice should be of interest. Also, if you want to conduct mock trials or other exercises, a malpractice lawsuit is something that students should be able to appreciate. You could also focus on basic writing skills, for instance, how to write client records that are clear, succinct, relevant, and free of bias or inappropriate judgment. You could focus on the role of clinician as a fact or lay witness, leaving preparation to be an expert witness for a graduate course. Still, students with undergraduate degrees should have some knowledge about expert witnesses, as practitioners such as child protection workers and probation officers may be asked to provide opinion evidence even if they do not possess graduate degrees.

### Sample Syllabus

The following course syllabus is intended for an undergraduate course on Social Work and the Law, though it could be redeveloped for another discipline.

**Syllabus – SOCIAL WORK AND THE LAW**

**SYLLABUS STATEMENT**

This course provides students with an orientation to the legal system, with particular focus on the roles that social workers may play within courts and other legal processes. In particular, this course will help students navigate the law and legal systems pertaining to family law, criminal law, mental health, and child welfare.

**LEARNING OBJECTIVES / COMPETENCIES**

Upon successful completion of this course, students will be able to:

1. Identify and locate both primary and secondary sources of law.
2. Understand and define legal concepts, including common law, legislation, paramountcy, evidence, civil procedure, criminal procedure, confidentiality, and privilege.
3. Describe and appreciate the roles of attorneys, judges, parties, lay witnesses, expert witnesses, and other people involved in court and other legal processes.
4. Write client notes in a manner that distinguishes subjective information, objective observations, assessment (opinions), and plans (or recommendations).
5. Prepare and present factual evidence in a clear and concise manner.
6. Respond effectively to cross-examination questions and challenges.
7. Analyze ethical and clinical issues that may arise when social workers may be called to testify in cases involving their clients.

**REQUIRED READINGS**

The primary textbook for this course is:

Barsky, A. E. (2012). Clinicians in court: A guide to subpoenas, depositions, testifying, and everything else you need to know (2nd ed.). New York: [Guilford Publications](http://www.guilford.com/).

We will also access information from the Internet, including the following websites with state and federal legislation pertaining to rules of evidence, rules of civil procedure, criminal law, mental health law, family law, and child protection.

**COURSE SCHEDULE AND WEEKLY READINGS**

|  |  |  |
| --- | --- | --- |
| **Dates** | **Class Description** | **Readings from Barsky Textbook & Assignments** |
| Week 1 | * Introductions * Course Overview: Rationale, Assignments, Expectations, and Choices * Pop Quiz: What do we already know? * Concepts of Justice * Overview of Trial Processes: Initiation, Pretrial, Trial, Deciding, Appeals * Other Tribunals * Legal Research: Locating Statutes and Cases | Chapter 1 |
| Week 2 | * Beginning With Yourself – witnesses as reflective practitioners * Attitudes toward Attorneys, Judges, and Legal System * Managing Transference * Guest Speaker: Family Law Attorney[[1]](#footnote-1) | Chapter 2 |
| Week 3 | First Contact – What to do if:   * A Client Complains * An Attorney Calls * You Receive a Subpoena   Confidentiality, Privilege, and Exceptions (compellability as a witness) | Chapter 3 |
| Week 4 | Preparation for Legal Proceedings   * Understanding your Role as Witness * Understanding the Legal Issues of the Case * Preparing to Speak with the Attorney * Role-Plays * Mental Preparation * Preparing Clients   Guest Speaker: Child welfare laws and proceedings | Chapter 4  Website for state laws re child protection (alternatively, for family law, mental health, or discrimination) |
| Week 5 | Field Trip: Observing an actual trial (Specific time and place to meet to be announced in a prior class) | Questionnaire distributed at courthouse |
| Week 6 | Oral Testimony at Trial   * Direct Examination * Cross-Examination * Hearings Without Attorneys * Technology * Videos: Samples of witnesses / trial processes   + TI Takes the Witness Stand (<http://www.youtube.com/watch?v=yFQCmL4nTNw>)   + Prop 8 Trial Re-enactment (start at 33 minutes) - <http://www.youtube.com/watch?v=bzDiFT_CWwE&feature=relmfu> * Preparation for Midterm Test and Moot Court | Chapter 5  Case scenarios and roles for Moot Court distributed in class |
| Week 7 | Mid-term Test | (Chapters 1 to 5) |
| Week 8 | Legal Documentation: Clinical Records   * Organization of Notes * Contents of Notes * Ethical and Legal Issues re Disclosure   Preparation for Moot Court | Chapter 6 |
| Week 9 | Expert Witnesses:   * Roles of Experts * Admitting Expert Evidence * Direct Examination * Cross-Examination   Guest Speaker: psychologist involved in mental health cases (involuntary committal) | Chapter 7 |
| Week 10 | Moot Court – child abuse trial with witnesses including parents, child, child protection worker, and school psychologist | Review Chapters 4 and 5, as well as case scenarios |
| Week 11 | Documentary Evidence:   * Reports * Affidavits * Exhibits   Guest Speaker: Juvenile court judge | Chapter 8 |
| Week 12 | Claims Against Clinicians   * Malpractice * Criminal Charges * Professional Review * Complaints to Licensing Body | Chapter 9  Websites for Professional Association (e.g., NASW or APA) and State Licensing Body |
| Week 13 | Alternatives to Adjudication (pretrial processes):   * Depositions * Interrogatories * Settlement Conferences   Role-Play - Depositions | Chapter 10  Witness preparation for depositions <http://www.youtube.com/watch?v=c1kyXDukUSU> |
| Week 14 | Alternatives to Adjudication (additional processes):   * Administrative Hearings * Mediation * Problem-Solving Courts   Guest Speaker: Drug Court Administrator  Preparation for Final Examination  Conclusions | Chapters 10 and 11 |
| Week 15 | Final Examination | Chapters 1 to 11 |

**GRADING AND ASSIGNMENTS**

The following components constitute the formal assessment of the degree to which the learner has achieved the learning objectives and competencies for this course:

Field Trip Reflection Paper 10%

Mid-Term Test 30%

Moot Court Analysis 20%

Class Participation (discussions, role-plays) 10%

Final take-home test 30%

100%

**Field Trip Reflection Paper**

The class will observe part of an actual court trial. Following this field trip, each student will write a 3 to 5 page paper (APA format, double spaced, 12-point font, 1 inch margins) dealing with the following questions:

1. What was the nature of the case? What were the legal issues to be resolved?
2. What were the names of the parties involved in the case?
3. What were the positions of each party?
4. What statutory laws were relevant to the case (include statute name and citation including where it can be found on the Internet)?
5. Select a specific witness: Which behaviors or manners of presentation contributed to this witness’s effectiveness? Which behaviors or manners of presentation impeded the witness’s effectiveness?
6. Select a specific attorney. Identify the attorney by name and role in the case. What thoughts or feelings did you have toward the attorney? How might your thoughts or feelings toward the attorney affect you as a witness in this case?

**Mid-Term Test**

This is a 2-hour closed-book test, based on your readings and material covered during classes up to the date of the test (esp. Chapters 1 through 5). For the test, you will be presented with 12 brief scenarios (e.g., an attorney calls to ask you to be a witness, a client initiates a grievance against you, an attorney is preparing you to testify, an attorney is asking questions during a direct examination, an attorney is asking questions during a cross-examination). You will be asked how to respond in an effective and ethical manner to each situation. **Evaluation** of your answers will be based on the clarity, specificity, and accuracy of each response, including its consistency with the material presented in the class and readings.

**Participation**

Student participation will be based on the following criteria:

1. Physical attendance at classes (on time and remaining for whole class);
2. Verbal involvement in class and group discussions;
3. Active participation in role plays or other group exercises;
4. Initiating discussion or bringing in information from assigned readings, other readings and/or experiences;
5. One-to-one dialogue with the instructor, outside of class;
6. Timely submission of assignments.

When considering the quantity and quality of participation, the following issues will be considered:

1. An appropriate level of participation from each student is related to the number of students in the class, the format of the class (e.g., lecture versus workshop), and the desirability of conciseness;
2. Respect for the rights of others in the class, including privacy and safety;
3. Good questions can include admitting one’s ignorance about a subject (if one person is feeling self-conscious about asking a question that may be seen as “stupid”, there are probably several others in the class who want to know the same thing);
4. Students do not need to agree with statements made by the instructor. Students are encouraged to think for themselves, ask challenging questions (in a respectful manner), and arrive at their own understandings;
5. Questions/comments which are not relevant to the class or which are stated clearly in the materials can detract from the class and take up valuable time (My least favorite questions are “Is that single-spaced or double-spaced?” and “When is the assignment due?”, when the answers are already set out in the materials).

If a student is away due to illness or other reason, it is that student’s responsibility to obtain notes, handout material, etc. from another student. The student may also suggest ways that they can make up for time lost (e.g., if you miss five classes, but you want to propose an extra assignment in lieu of participation).

If you have concerns about the class, or recommendations for it, please make these suggestions early so that they can be addressed/incorporated as early as possible.

Enthusiasm and humor can also contribute to the class.

**Moot Court Analysis**

Each student will write a 4 to 6 page paper (APA format, double spaced, 12-point font, 1 inch margins), analysing the in-class moot court exercise. The analysis should include answers to the following questions:

1. Who were the parties and what were their specific roles in the trial?
2. What were the legal issues in dispute?
3. What statutory provisions were important to the outcome of this case? (include full citation and website)
4. Identify one judicial decision (case) that is relevant to this the scenario that the class role-played. Who were the parties in the case? What were their positions? What did the judge decide? Describe the legal principle that can be derived from this case how it is relevant moot court case.
5. For each witness: Provide specific examples of responses that were effective, and specific responses that were not so effective (in total, you should have at least 6 effective examples and 6 not so effective examples; you do not need to have equal numbers of examples for each witness). For the responses that were not so effective, provide an example of how the witness could have responded more effectively.
6. What key learning did you take away from your participation in this exercise? How will your learning from this exercise affect how you practice as a professional?

**Final Examination**

This is a 2-hour closed-book examination, based primarily on your readings and material covered during classes up to the date of the test (esp. Chapters 1 through 5). For the test, you will be presented with 12 brief scenarios, similar to the scenarios in the midterm test, but focusing more on issues in Chapters 6 through 11 (e.g., you are called to testify as an expert witness, you are being cross-examined as an expert witness; you are writing case notes that might be used in court, you are writing a psychosocial assessment that might be used in court, or a client sues you for malpractice). You will be asked how to respond in an effective and ethical manner to each situation. **Evaluation** of your answers will be based on the clarity, specificity, and accuracy of each response, including its consistency with the material presented in the class and readings.

## Graduate Courses

Whereas an undergraduate course may be a relatively broad introduction to the law, legal processes, and the roles of clinicians as witnesses, a graduate course might focus on a particular area of law. Graduate courses might include Psychology and the Law: Family Law (Separation and Divorce); Social Work and the Law: Child Welfare; Criminal Justice System and Processes; Juvenile Justice System and Processes; Working with Clients at Risk of Suicide or Homicide: Legal Issues, Roles, and Processes for Mental Health Professionals; Forensic Roles for Mental Health Professionals; Disability and the Law; Discrimination and the Law. In addition, graduate courses may provide greater focus on Chapter 7 (Expert Witnesses) than undergraduate courses. The syllabus in the following section relates to a course focusing on family law and could be adapted for other specific areas of practice.

### Sample Syllabus

**Syllabus – PSYCHOLOGY AND THE LAW: CRIMINAL JUSTICE**

**SYLLABUS STATEMENT**

This course provides students with an in-depth understanding of family law issues and processes, with particular focus on the roles that psychologists may play within a case involving divorce or separation.

**LEARNING OBJECTIVES / COMPETENCIES**

Upon successful completion of this course, students will be able to:

1. Identify and locate both primary and secondary sources of law.
2. Understand and define legal concepts, including common law, legislation, paramountcy, evidence, criminal procedure, confidentiality, privilege, standard of proof, mens rea, actus reus,
3. Apply knowledge from psychology to legal contexts, including issues pertaining to memory, perception, honesty, behavioral risk assessment, attitudes, and personality testing.
4. Describe and appreciate the roles of attorneys, judges, parties, lay witnesses, expert witnesses, and other people involved in the criminal justice system.
5. Distinguish the roles and ethical obligations of treating clinicians versus forensic experts, evaluators, court counselors, probation officers, parole officers, and trial consultants
6. Prepare and present factual evidence in a clear and concise manner
7. Prepare and present expert evidence (including oral testimony, reports, affidavits, and forensic evaluations) in a clear and concise manner.
8. Respond effectively to cross-examination questions and challenges.
9. Analyze and resolve ethical issues that may arise when acting as a fact witness, expert witness, or specific forensic role.

**REQUIRED READINGS**

The primary textbook for this course is:

Barsky, A. E. (2012). Clinicians in court: A guide to subpoenas, depositions, testifying, and everything else you need to know (2nd ed.). New York: [Guilford Publications](http://www.guilford.com/).

We will also access information from the Internet, including the following websites with state and federal legislation pertaining to rules of evidence, rules of criminal procedure, criminology, and criminal law.

**COURSE SCHEDULE AND WEEKLY READINGS**

|  |  |  |
| --- | --- | --- |
| **Dates** | **Class Description** | **Readings from Barsky Textbook & Assignments** |
| Week 1 | * Introductions * Course Overview: Rationale, Assignments, Expectations, and Choices * Student Groups: assign one case per group of 6 students for problem-based learning and exercises throughout the term. * Concepts of Criminal Justice – Retribution, Punishment, Deterrence, Rehabilitation, Restoration * Overview of Criminal Processes: Arrest, Booking, Indictment, Arraignment, Plea Bargaining, Jury Selection, Pretrial Motions, Trial, Sentencing, Appeals * Other Tribunals * Legal Research: Locating Statutes and Cases | Chapter 1  Case Scenarios (to be distributed in class) |
| Week 2 | * Definitions of Criminality * Attitudes toward Judges, Prosecuting Attorneys, Defense Attorneys, People Accused or Convicted of Crimes, Victims of Crimes, Expert Witnesses, Criminal Justice System, Juvenile Justice System * Managing Transference * Guest Speaker: Forensic Psychologist[[2]](#footnote-2) | Chapter 2 |
| Week 3 | Confidentiality, Privilege, and Exceptions   (compellability as a witness)  Forensic Roles in the Criminal Justice System   * Specializations * Gaining knowledge and expertise   Debate: Should psychologists participate in psychological profiling?  Case-Based Learning   * Group Work – identifying what you need to know | Chapter 3 |
| Week 4 | Preparation for Legal Proceedings  Case-Based Learning   * What are the legal issues in your case? * Where can you find the relevant substantive law and procedural law? * How should the psychologist prepare for an upcoming hearing? * Preparing to Speak with the Attorney * Role-Plays * Mental Preparation * Preparing Clients   Guest Speaker: Juvenile Court Judge | Chapter 4  Federal Rules of Criminal Procedure  [http://www.law.cornell.edu/rules/frcrmp](http://www.law.cornell.edu/rules/frcrmp/)  State Rules of Criminal Procedure |
| Week 5 | Field Trip: Observing an actual trial (Specific time and place to meet to be announced in a prior class) | Questionnaire distributed at courthouse |
| Week 6 | * Oral Testimony at Trial * Video: observe and critique – “Anatomy of a Murder” (1959) or “Beyond a Reasonable Doubt” (2009) * Preparation Role-Plays for Moot Court (fact witnesses) | Chapter 5 |
| Week 7 | * Expert Witnesses * Forensic Interviews * “Basic Instinct” – interview with court-appointed psychologist in a murder case <http://www.youtube.com/watch?v=QpYH0vXKDi4> (movie vs. reality) * Preparation Role-Plays for Moot Court (expert witnesses) | Chapter 7 |
| Week 8 | Moot Court – Jury Selection | American Society of Trial Consultants  <http://www.astcweb.org/public/index.cfm>  [http://www.thejuryexpert.com](http://www.thejuryexpert.com/) |
| Week 9 | Moot Court – Capacity to Stand Trial  Legal Documentation: Clinical Records   * Organization of Notes * Contents of Notes * Ethical and Legal Issues re Disclosure   Preparation for Moot Court | Chapter 6 |
| Week 10 | Moot Court – Murder Case (trial) | Review Chapters 4, 5, & 7 |
| Week 11 | Rape Case (sentencing)  Documentary Evidence: Presentencing Reports   * Reports (esp. presentencing report, victim impact statement) * Affidavits * Exhibits * Preparation for Final Assignment   Guest Speaker: Victim-Witness Advocate/Rights Group | Chapter 8 |
| Week 12 | Claims Against Clinicians   * Malpractice * Criminal Charges (including contempt of court, obstruction of justice, negligent homicide) * Professional Review * Complaints to Licensing Body   Guest: Legal Aid Official | Chapter 9 |
| Week 13 | Alternatives to Adjudication   * Diversion * Restorative Justice * Mediation | Chapter 10  Restorative Justice  [http://www.restorativejustice.org](http://www.restorativejustice.org/)  and  <http://www.mediate.com/acrcriminaljustice> |
| Week 14 | Alternatives to Adjudication:   * Drug Courts * Other Problem-Solving Courts   Conclusions | Chapters 10 and 11  National Drug Court Institute  <http://www.ndci.org/ndci-home> |
| Week 15 | Final Assignment Due | Presentencing Report |

**GRADING AND ASSIGNMENTS**

The following components constitute the formal assessment of the degree to which the learner has achieved the learning objectives and competencies for this course:

1. Literature Review 30%
2. Small Group Exercises and Analysis 40%
3. Presentencing Report 30%

100%

1. **Literature Review**

For this paper, each student will select one of the following topics and conduct a literature review:

* The reliability of a young child’s testimony
* Repressed and recovered memories in sexual abuse cases
* Evaluating competence to stand trial
* Assessment of risk of violence (re sentencing, probation, parole, or early release programs)
* Criminal profiling (based on race, ethnicity, or other diversity factors)
* Jury selection

The write-up of the literature review should include the following components:

1. Introduction (What is the nature of the issue(s)? How are these issues relevant to psychologists as expert witnesses or trial consultants?)
2. Literature Review (What is the history of this issue within forensic psychology? What is the current state of the research/knowledge? What is known with relative certainty and consensus? What issues are uncertain, unknown, or entail conflicting evidence and controversy?)
3. Implications (What is the relevance of your literature review/findings to psychologists as forensic witnesses or trial consultants? What is the relevance to the criminal justice system, the accused, the alleged victim, prosecuting attorneys, defence attorneys, judges, or other relevant stakeholders? What are the needs for further research in this area?
4. **Small Group Exercises and Analysis**

The class will be divided into groups of 5 to 6 students. Each group will be assigned a different case to use for problem-based learning experiential assignments throughout the term. The cases will relate to either: jury selection, determining the capacity of an accused person to stand trial (accused with schizophrenia or severe cognitive impairment), murder case (trial), or rape case (sentencing). Throughout the course of the term, each group will prepare for and present a certain aspect of a criminal court proceeding. Each group will be expected to provide a 12 to 15 page reflective paper (APA format, double spaced, 12-point font, 1 inch margins) that includes the following information:

1. Overview of the Case: What was the nature of the case? What were the legal issues to be resolved?

What were the names of the parties involved in the case? What were the positions of each party?

What statutory laws were relevant to the case (include statute name and citation including where it can be found on the Internet; include both substantive and procedural criminal laws, including the most relevant sections of the laws)?

1. Preparation: Critique the manner in which the psychologist(s) prepared for the case. What was the psychologist’s particular role in the case? What types of preparation were most helpful? What challenges, obstacles, and limitations arose in your process of preparation?
2. Moot Court Role-Play: Critique the psychologist(s) effectiveness as a witness. Relate the psychologist’s use of skills and strategies as a witness. Provide examples of how the witness established credibility and how the witness qualified as an expert. Identify ways in which the witness could have been even more effective as a witness.

**Evaluation** of this paper will be based on the level of critical analysis, including ability to identify relevant legal issues and sources, identification of the witness’s specific strengths and areas for improvement, clarity of analysis, and integration of information from your readings with the group’s experience in moot trial role-play.

1. **Presentencing Report**

For this assignment, students will work on pairs. One student will act as a forensic psychologist and one student will act as a person recently convicted of murdering his parents. The students will role-play a forensic interview so that the forensic psychologist may prepare a presentencing report. The students should video or audio record the interview and person playing the psychologist should take notes during the interview. Upon completion of the interview, BOTH students will prepare and submit the presentencing report according to guidelines distributed in class. The report should be 4 to 7 pages in length (double-spaced), including any appendices. Students will submit the video or audio recording of their interview so the instructor can determine how well the information in the report fits with the responses of the interviewee.

**Evaluation** of this assignment will be based on completing the report according to the guidelines, clarity, accuracy, use of nonjudgmental language, and relevance of the information to the issue to be decided by the judge.

## Continuing Education Courses

You may use various chapters from this book to develop and present a variety of continuing education courses. You could ask students to prepare for your course by reading the relevant chapters in advance, or you could offer this book as a resource to be used after completion of the course. Possible continuing education courses include:

* Legal Documentation: Client Records, Forensic Evaluations, Affidavits, and Reports (2 to 4 hours)
* Clinicians in Court: Oral Testimony (3 to 6 hours; could tailor to particular area of practice, such as “Clinicians in Criminal Court,” “Social Workers in Child Welfare Court,” “Mental Health Professionals in Family Court,” or “Clinicians in Immigration Cases”)
* Clinicians in Court: Preparation for Trial (2 to 4 hours)
* Preparation for Depositions (2 to 4 hours)
* Clinicians in Court: Responding Effectively in Cross Examination (2 to 3 hours)
* The Role of an Expert Witness (3 to 6 hours; could also focus on specific roles such as custody evaluator, trial consultant, or issues of mental capacity)
* Preparing Reports and Affidavits (2 to 4 hours; could focus on a particular type of report, such a custody evaluation, presentencing report, or amicus brief in a human rights case)
* Ethical Issues for Clinicians as Witnesses (2 to 3 hours)
* Role Differentiation – Treating Clinician Versus Forensic Expert (2 to 3 hours)
* Responding to Claims of Malpractice (2 to 3 hours)

You could also assemble various combinations into a one or two-day workshop. Since people seeking continuing education credits typically want a heavy practice focus, consider the use of role-plays, live demonstrations, writing workshops, and other experiential exercises. You may also want to make use of small-group facilitators who can help groups perform the exercises and provide feedback.

## Sample PowerPoint Slides

[insert PPT file for a sample CEU course – one-day workshop]

# Prologue

The prologue to this textbook provides students with challenges that may arise in various stages of legal processes. You may also provide some examples of horror stories, triumphs, and other learning experiences from your own practice. If student have had prior experience with attorneys, judges, and courts, you may ask them for examples of their experiences. Otherwise, you could ask students to write down their “greatest hopes” and “worst fears” for the first time they have to appear in court in a professional capacity. Once students have written their responses, you could have them share their thoughts in small groups or with the whole class.

# Chapter 1 – Introduction

## Key Words from Chapter

1. Treating clinician, forensic expert
2. Party, witness, expert witness, plaintiff, defendant, prosecutor, accused
3. Civil law (2 meanings), common law, criminal law, tort law, family law, child welfare, mental health law, probate and estates law
4. Precedent, stare decisis
5. Evidence, admissibility, weight
6. Court processes: arraignment, indictment, motions, pretrial, jury selection, trial, appeal
7. Adjudication, mediation, arbitration, negotiation, plea bargaining

## Teaching Strategies

This chapter provides students with an overview of the justice system, including court processes. To facilitate an introduction to the law, it may be useful to show a video of a real or fictional trial. Use the video to demonstrate the layout of a courtroom, the roles of various professional, and the general flow of the proceedings. If using a video of a fictional trial, highlight what is realistic and what is not. Regardless of the video, also indicate what features may be particular to the type of case (e.g., criminal vs. civil). If you have a law school on campus, you might be able to use its moot court room for one or more of your classes. Alternatively, you could arrange your classroom to look like a courtroom.

This chapter contains a lot of new language for students to learn and integrate. If your class is focusing on a particular area of law, you could focus on the terminology that relates most closely to that area (e.g., if you are focusing on child welfare, you do not need to focus on jury trials, arraignment, and other terms that are more pertinent to criminal court processes). You could start the class by asking students for their experiences and interests in court:

1. Have you ever participated in a court process (as a witness or a party to the action)? If so, what was the nature of the case? What role did you play?
2. As a professional, how do you think you might be involved in court or related legal processes?
3. What are the three most important things that you hope to gain from this course?
4. What is the one thing that makes you most anxious about participating in legal proceedings?
5. What is one challenge that you will have to manage in order to be successful in this course?

Facilitate discussion regarding the roles that professionals such as those in your class may play. In particular, help students distinguish between roles as parties, fact witnesses, and expert witnesses. Further, students may not know that their ethical obligations are quite different depending on whether they are acting as a treating clinician versus a forensic clinician. They may assume, for instance, that when they perform a custody evaluation, the client is the family (or the parents, or the parents and child). If they are court-appointed, then their client is the court and their obligations to the family members is quite different than if they were acting as a treating clinician.

The textbook is written for a national audience, so you will need to localize the content. In Figure 1.1, for instance, you may assist students in reflecting on their roles by addressing a particular role and helping them identify sources of law that relate to that particular role. For instance, if your class comprises mental health professionals that will be working with involuntary committal cases, then help them find laws pertaining to involuntary committal of suicidal and homicidal persons. If your class comprises clinicians interested in criminal justice, then help them identify state and federal statutes related to criminal procedure, evidence, and criminal offences. Alternatively, you could use the questions Figure 1.1 for a takehome assignment. Ask students to answer these questions in relation to their particular professions, giving them each a sample case that relates to their intended area of practice (e.g., a case scenario related to psychiatric diagnoses, mental capacity, discrimination, or elder abuse).

The primary case example that runs through this book is a family law case that includes four types of clinicians – a family counselor, a mediator, a child protection social worker, and a forensic evaluator. Each professional has a different mandate, role, and set of legal and ethical obligations. If students are not familiar with some of these roles, it will be helpful to discuss and distinguish the different roles, for instance:

* As a family counselor, Frieda’s primary client is the couple (Philip and Paula), and her primary goal is to help them work through their differences in order to be able to remain together as a couple. In most cases, family counselors do not end up in court, but Frieda still needs to be prepared for the possibility of being subpoenaed or requested to appear in court (e.g., when she explains the limits of confidentiality to the clients).
* As a mediator, Michael’s primary client is also “Philip and Paula,” but his primary goal is to help them separate in an amicable manner. Because Michael knows the couple is divorcing, he knows they will be involved in court and needs to take precautions to ensure that what happens in mediation stays in mediation (e.g., have the clients sign an agreement to mediate stating that they agree not to subpoena Michael or his records). Even with such protections, Michael could end up in court (e.g., if a client sued him for malpractice).
* As a social work investigator, Sam’s primary client is Debra (the child) and his primary mandate is to ensure her safety and welfare. Sam cannot promise the parents blanket confidentiality, as Sam may use information gathered from them in future child protection hearings. The way that Sam’s role is defined as an “investigator,” his role is primarily a forensic one. There would be other social workers or clinicians assigned to provide treatment services to Debra and, or her parents. It is possible for a child protection worker to have a combination of forensic and treatment roles, as in the first exercise at the end of this chapter.
* As a forensic evaluator appointed by the court, Evelyn’s client is the court and her primary ethical commitment is to the court. This may seem odd to students, who might assume Evelyn’s primary client is the family, the couple, or the child. Help students understand that Evelyn’s role is to evaluate, not to provide treatment services.

To help students remember the different roles and characters, refer them to the ecomap and genogram in Chapter 1, as well as a copy on the last page of the textbook. This graphic can serve as a quick reminder of the various roles and relationships. Also, remind students that the first letter of each character’s name reflects the person’s role (D-Debra-Daughter; A-Art-Attorney, P-Paula-Parent).

If you want to supplement the case to focus on criminal law or mental health law issues, you could add some facts and characters as follows:

* Criminal Law: Add facts suggesting that Paula has accused Philip of physically assaulting her, and police have laid charges for assault. You could then add characters such as Oliver the probation officer, Armando the district attorney, and Alexia the defense attorney.
* Mental Health Law: Add facts suggesting that, at one point, Paula has thoughts and plans to kill Philip. She receives a psychiatric evaluation from Dr. Edwards, who admits her to a mental health facility on an involuntary basis. Paula’s case goes to court in order to determine whether she should be released from the facility (you could keep Alice as her attorney or add another attorney who specializes in mental health issues).

For role-plays (including mock trials), you could assign different students in the class to different characters.

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

Appendix G contains questions “For Further Reflection” for each chapter. These questions and exercises can be used for large or small group discussion, or as take-home papers and assignments. I will provide suggestions for how to use each type of question or exercise, but feel free to be creative. The numbers in square brackets [e.g., 8 minutes] indicate approximate lengths of time to set aside for each discussion question or exercise.

1. *Dual Relationships* (page 291): This is a good case for large-group discussion. Most codes of ethics suggest avoiding dual relationships, which is good advice for Dr. Vanity in this case. Still, most codes do not provide ABSOLUTE prohibitions, so it is useful to assess the risks and benefits of Dr. Vanity taking on the second role. You could also add facts to make the case more challenging – e.g., if this were a rural and remote community, where Dr. Vanity was the only professional available to provide treatment services, or if the client spoke only Spanish and Dr. Vanity is the only Spanish-speaking professional in the area. If your students have used an “Ethical Decision-Making Framework” in other classes, encourage them to use that framework for ethical issues, such as the one in this exercise (for the “Framework for Managing Ethical Issues” that I use, see <http://www.barsky.org/ethics/ethics.htm>). [10 minutes]
2. *Helping Whom?*(page 291) If you have gone through Question 2, in class as a whole, you could use this scenario for small group discussions or a take-home assignment. If not, it may be useful to go through the process of thinking through this case as a large group. This is a good case to help students understand that if they act as an advocate for a client, their credibility as an expert witness could be called into question during cross-examination. [15 minutes]
3. *Treating versus Forensic* (pages 291-292): For this question, you could divide the class into small groups and have each group work on different worker responses and report their answers back to the class. Help students understand how empathic responses that they might use as treating clinicians might be inappropriate as forensic experts (e.g., because they are leading the client to respond in a particular manner, or because they indicate the forensic expert’s biases) [15 minutes].
4. *Agent of Change versus Agent of Social Control* (page 292): This question is designed for large group discussion [5 minutes]. You might invite a clinician who does forensic work as a guest speaker to discuss how s/he manages the two roles and balances ethical obligations (and what gives meaning to his/her work).

## Additional Discussion Questions and Exercises

The following discussion questions and exercises may be used to supplement the materials and questions in the textbook. Following each question or exercise, I have provided a box with suggestions for the instructor.

1. *Role Identification*:Identify whether the professional in each of the following cases is playing the role of treating clinician, forensic expert, or a combination of both.
   1. Sally is a social worker for a child protection service. She investigates parents to determine whether they are mistreating their children. In addition to investigation, Sally offers psychosocial services to the family. If the children are at risk of abuse or neglect and the parents are not cooperative, Sally may have to testify in court.
   2. Harlan provides addiction counseling at an employee assistance program. Harlan provides the employer information about whether referred employees are receiving services. Harlan does not provide the employer information concerning the employee's progress in counseling.
   3. An attorney hires Dr. Waters to assist with jury selection in a criminal case involving a doctor who provided opiates for a patient who wanted to end his life. The attorney wants Dr. Waters to assess which jurors have favorable or unfavorable attitudes toward assisted suicide.

For this exercise, ask students to identify whether the professional in each case scenario is playing the role of treating clinician, forensic expert, or a combination of both. This exercise is designed for large group discussion, though you could do the first case as a large group and have small groups respond to the other questions. [5 minutes]

ANSWERS: Sally plays a combination of treatment and forensic roles. Harlan serves as a treating clinician. Dr. Waters serves as a forensic expert. You could also ask students about each person’s ethical responsibilities and commitments given their roles.

1. *Case Notes*: Select one of the following cases.

* [*Kumho Tire Co. v. Carmichael* (1999)](http://www.law.cornell.edu/supct/html/97-1709.ZS.html)
* [*Clark, Eric Michael v. Arizona* (2006)](http://www.law.cornell.edu/supct/html/05-5966.ZO.html)
* *[Lawrence v. Texas](http://www.law.cornell.edu/supct/html/02-102.ZD.html)* [(2003)](http://www.law.cornell.edu/supct/html/02-102.ZD.html)
* [Greene v. Camreta (*2*009)](http://www.ca9.uscourts.gov/datastore/opinions/2009/12/10/06-35333.pdf)
* [*Tarasoff v. Regents of University of California* (1976)](http://www.publichealthlaw.net/Reader/docs/Tarasoff.pdf)
* [*Crawford v. Washington* (2004)](http://www.law.cornell.edu/supct/html/02-9410.ZO.html)

Locate the case using an online legal information database. As you read the case, identify the following information:

* 1. Who are the parties in the case (names and roles as plaintiff, defendant, state prosecutor, appellant, respondent, etc.)?
  2. What is the full legal citation for the case?
  3. Which court issued the decision in this case?
  4. Which court made the original trial decision?
  5. What are the key facts of the case?
  6. What was one of the key legal issues in this case (especially from the perspective of a mental health professional as a treating clinician or as a potential witness in a court case)?
  7. What was the ultimate decision and order in this case?
  8. What legal principles did this case establish that may be applied to future cases (in particular, what was the primary legal precedent established by the court)?

For this exercise, I suggest that you take the students through one case in class, giving students a copy of a case and helping them analyze the different components [15 to 20 minutes]. Then give students another case to analyze on their own (in class [15 to 20 minutes] or at home as a written assignment [2 pages]). The full citations and web links for these cases are listed in the References section toward the end of the textbook, and I have also provided hyperlinks to the cases in this Instructor’s Manual. The cases cited in this exercise have national significance. Alternatively, you might use a local case from your state or judicial district. You could invite a law librarian or legal research expert to help the class with this exercise, as well as to demonstrate how to use online tools for legal research.

1. *Debra’s Case:* Refer to the Carveys’ case scenario in Chapter 1. Assume that Debra was so fed up with both of her parents that she obtains a guardian to sue them for mental cruelty and infliction of mental distress. Prior to the trial, the guardian hires a psychologist to conduct a psychosocial assessment of Debra. The guardian also wants Paula’s minister and Debra’s school guidance counselor to testify regarding their observations of Philip and Paula.
   1. Given this scenario, identify who in this case would be: (i) the plaintiff(s), (ii) the defendant(s), (iii) fact witness(es), and (iv) expert witness(es).
   2. What type of case is this­—criminal, civil, family, or mental health?
   3. Who has the burden of proof in this case?
   4. What standard of proof would the court use to determine whether the parents are liable to Debra for damages?
   5. What type of pretrial processes might be used in this case—arraignment, depositions, mediation, plea bargaining, or attorney-led negotiations?

*Debra’s Case:* This exercise is very useful in terms of helping students understand the various roles and how to apply terminology to the facts of a particular case. Go through the questions in class or in small groups [5-10 minutes]. You could also give students a second scenario related to malpractice, criminal law, mental health, or some other context of practice.

## Test Questions

You may use the following questions for an in-class quiz, an online quiz (e.g., using BlackBoard), or preparation for a larger exam.

1. Kelly has been hired to provide vocational counseling for Xavier, who has been injured in a car accident and needs help finding a new career. Xavier is suing the person who caused the car accident. Kelly is playing the role of a:
   1. Forensic expert.
   2. Treating clinician.\*
   3. Plaintiff.
   4. Defendant.
2. Rollo is a child protection who has been charged with criminal negligence causing death for failure to follow through on his work with a child who had been physically abused by his parents. Rollo’s role in the criminal trial is that of a:
   1. Defendant or accused person.\*
   2. Forensic expert.
   3. Prosecuting attorney.
   4. Fact witness.
3. Quincy provides behavior therapy to Will. Will is unhappy with Quincy’s competence and sues him for malpractice. Quincy’s role in the civil court case is a:
   1. Mediator.
   2. Prosecuting attorney.
   3. Party.\*
   4. Forensic expert.
4. Fran has suicidal ideation and has been admitted into a special facility on an involuntary basis. She wants to be released. Her case will be heard in a court that specializes in:
   1. Family law.
   2. Common law.
   3. Mental health.\*
   4. Malpractice and torts.
5. Irma has passed away and her family is fighting over who gets her property. The case will be handled in a court that specializes in:
   1. Criminal law.
   2. Child welfare.
   3. Probate and estates.\*
   4. Mental health.
6. A legal case that establishes a new legal rule or principle is called a:
   1. Party.
   2. Precedent.\*
   3. Statute.
   4. Mediator.
7. An attorney asks a witness to discuss her sexual history. Another attorney objects, saying that the evidence is irrelevant and prejudicial. The judge in this case will need to rule on:
   1. The weight of the evidence.
   2. The admissibility of the evidence.\*
   3. The precedent of the evidence.
   4. The forensics of the evidence.
8. In a criminal proceeding, a state attorney presents witnesses and asks them questions in order to prove that the accused committed the offence. At what stage does this examination of witnesses take place?
   1. Pretrial.
   2. Arraignment.
   3. Indictment.
   4. Trial.\*
9. In a divorce proceeding, the judge asks to meet privately with the attorneys and parties in order to resolve the case without having to present evidence in court. This private meeting is called a:
   1. Trial.
   2. Deposition.
   3. Pretrial settlement conference.\*
   4. Jury selection (voir dire).
10. Sabina accuses Emmanuel of racial discrimination. The case is diverted from court to a third party who tries to help the parties resolve the issue on their own. This conflict resolution process is called:
    1. Arbitration.
    2. Mediation.\*
    3. Adjudication.
    4. Probate.

# Chapter 2 – Beginning With Yourself

## Key Words from Chapter

* Reflection, self-awareness, conscious use of self
* Transference, countertransference
* Confidentiality, dual relationship, conflict of interest
* Adversarial, collaborative
* Rules, fairness
* Objective truth, subjective meaning

## Teaching Strategies

This chapter focuses on reflection, self-awareness, and conscious use of self. Students who have taken courses on interviewing and practice skills may already be familiar with these concepts in relation to counseling and interviewing. Help students apply the same concepts to their role as a witness. You could also demonstrate how the concepts of transference and countertransference may apply (i.e., how unconscious processes may inhibit one’s effectiveness as a reflective practitioner, including in the role as a witness). Provide students for strategies for dealing with transference and biases – e.g., journaling, supervision, self-talk, and peer debriefing.

One way to start your class is to ask for examples of jokes about attorneys (even politically incorrect jokes). These jokes can be used to explore stereotypes and attitudes toward attorneys as sharks, leaches, predators, bloodsuckers, liars, or ambulance chasers. You could also initiate discussion about popular images of attorneys in the media (e.g., television shows such as Ally McBeal and Law & Order, or cases that have been overblown in the media, such as the OJ Simpson. Another approach is to ask students to think of a particular attorney who has made an impression on the student. Ask each student to write a paragraph about why the student admires, or dislikes the attorney, and what the student has learned about the justice system from this attorney. Then engage the class in a discussion of their experiences with judges and legal processes. When students discuss negative attributes or examples, you could ask how they can work effectively with an attorney who displays such attributes or behaviors (what strategies for coping with a dishonest or aggressive attorney). You can also help students challenge their own generalizations by asking if all attorneys are the same – for instance, can they think of other attorneys/experiences that demonstrated more positive attributes.

To open a discussion of the role of a clinician as a witness, identify roles that students in your class are most likely to assume (e.g., if the class focuses on forensic psychology, then focus on forensic roles; if the students in the class intend to practice as child protection workers, then focus on these roles). Regardless of whether a clinician is acting as a forensic expert or treating clinician, once the clinician is on the witness stand, credibility is vital. Discuss how gaining the trust of a client in a clinical session is different from gaining the trust of a judge or jury in a trial.

To gain a better understanding of the adversarial system and why attorneys might seem aggressive, single-minded, or narrowly focused, compare the traditional legal system with typical clinical processes (adversarial vs. collaborative, public forum vs. private office, rules vs. relationships/fairness, and facts vs. subjective meaning). Describe the value of each type of process and profession. Even if students detest the adversarial nature of the legal system, they may need to participate within it. By understanding the system, they may be in a better position to deal with attorneys more respectfully and effectively. To stimulate discussion, you could talk about the following scenarios:

* A defense attorney who knows her client is guilty of burglary, yet defends the client anyhow (is this a sign of lack of integrity or morality?)
* An attorney who argues for strict application of a family law statute, even though the result seems to be detrimental to one or both parents (e.g., the law favors joint legal custody, even though such an arrangement may lead to intense conflict between the parents)
* An attorney who uses a legal technicality to have a volatile client released (prematurely) from a mental health facility

Students may tend to view issues from the clinician’s perspective. Invite students to do a role-reversal and view things from an attorney’s perspective.

* A clinician has been called to testify in a murder but says she is bound to maintain client confidentiality, even if it means the keeping relevant information away from the jury.
* An attorney is questioning a clinician about the client’s risk of committing suicide. The clinician gives a vague answer, discussing the client’s risk factors but refusing to testify whether the risk of suicide is 1%, 10%, 50%, or any other probability.
* Consider a civil lawsuit in which a client is suing a trampoline manufacturer in a product liability case. The clinician has been helping the client deal with traumatic brain injury. The case is headed to trial and the clinician is concerned the resulting anxiety will be detrimental to the client. The clinician calls both attorneys to help them resolve the case in a collaborative manner.

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

1. *Other Professionals* (page 292)*:* This exercise may be used as a written assignment or as a group assignment, giving students time to prepare before presenting their analysis to the class. You could provide students with the websites for specific codes of ethics, and ask different students or groups to compare and contrast different professions, particularly as they related to testifying in court.
2. *Empathy and Impartiality* (page 292): This case may be used for large-class discussion to highlight how empathy and affiliation with clients may affect ones impartiality and credibility as a witness. You could also refer students to their codes of ethics and agency policies to consider their usual mandates (e.g., to serve clients) versus their mandates in court (e.g., to tell the truth, the whole truth…). [5 minutes]
3. *Defending an Alleged Sex Offender* (pages 293): This case is designed for class discussion. You could assign students to play different professional roles and see if their views of the case differ depending on whether they are playing the role of a psychologist, social worker, clergy, defense attorney, prosecuting attorney, or judge. You could show the video, “Ethics in America – To Defend a Killer” (Annenberg Foundation) to stimulate a similar discussion.
4. *Role Conflict* (page 293): This scenario works well as a role-play. Have students read the case and prepare brief notes for how Polly should respond. Then, role-play the scenario to see how Jared reacts to Polly’s explanation, and to see how she responds to further questions from him.
5. *Child Abuse* (page 293):Students may be surprised to learn that their ordinary obligations to report cases to child protection authorities may be abridged if they are working in law offices. The scenario in this exercise works well with large or small group discussion. You could provide students with access to local state laws regarding their obligation to report, as well as to local codes of ethics for attorneys.
6. *Video Response* (page 293): This exercise could be used as a takehome or in-class assignment. You could provide students with the URLs of specific cross-examinations (e.g., <http://www.youtube.com/watch?v=a0oyg76VKP8&feature=related>; <http://www.youtube.com/watch?v=WOmBwfMiQ4A> ). You could also use humorous animated videos, such as <http://www.youtube.com/watch?v=sClBwPEV-5M&feature=related>. Advise students that some videos may be more realistic or representative than others. Even if a video is based on stereotypes or inaccurate portrayals, it may still be worth watching and reflecting upon.
7. *Comparative Roles and Ethics* (page 293)*:* This assignment is intended to be a takehome assignment. If you want to use it as an in-class scenario, then you would need to provide students with a copy of the relevant segments of the codes of ethics for attorneys and for their own profession.

## Additional Discussion Questions and Exercises

1. *Attitudes*: For each of the following statements, identify whether you (i) strongly disagree, (ii) disagree, (iii) agree, or (iv) strongly agree.

a. Most attorneys are willing to be dishonest in order to win a case for their clients.

b. Law is a noble profession that promotes liberty and justice for all.

c. Most attorneys do not respect the knowledge and skills of clinicians from my profession.

d. The rules of evidence in a court are designed to ensure that everyone has a fair opportunity to present their stories and be heard by an impartial judge.

e. Treating clinicians should avoid testifying in court when their testimony may go against the client's interests.

f. Judges help defend the rights of minorities and people with less power.

g. I can trust that judge will be honest and respectful toward me.

Select one of the statements where your answer suggests that your current attitudes might inhibit your ability to work with attorneys and testify effectively. Write two or three paragraphs, reflecting on your answer, identifying how your current attitudes may have been shaped, and suggesting what you can do to ensure that your attitudes do not inhibit your work.

For this exercise, ask students to complete their answers individually (on paper), then have them discuss their answers in small groups or with the full class [10-15 minutes].

1. *Role Reversal*: Assume that Sasha is supervising a clinician named Kerry. Kerry’s clients, an elderly couple, were killed in a horrific knifing attack. During a session where Sasha is preparing Kerry to participate as a witness in the murder trial, Kerry says:

“What’s wrong with attorneys? Are they missing that ethics gene that tells people the difference between right and wrong? That lawyer, Ms. Reza, is defending a killer. Everyone knows that Varner killed the old couple. How can Reza sleep at night, knowing that she’s helping such a bloodthirsty monster? I cringe at the thought of being cross-examined by her.”

Role-play this supervision session, where Sasha’s task is to help Kerry gain insights into Ms. Reza’s role as a public defender. To help Kerry reflect on Ms. Reza’s perspective, Sasha should ask Kerry to participate in a role reversal: Kerry will assume Ms. Reza’s role and Sasha will assume Kerry’s role.

This role-play exercise can be conducted in small groups or in one large group [15 minutes]. You could assume the role of the supervisor and have a student play the frontline worker, or assign both roles to students. For a good video on a related scenario, you could show the following documentary: Annenberg Media. (1988). *Ethics in America: To defend a killer* (VHS). Washington, DC: Author.

## Test Questions

1. When Ella works with a particular attorney, she has trouble dealing with his authoritative nature because it brings back memories how her father treated her. Ella’s reaction is caused by:
   1. Transference.\*
   2. Precedence.
   3. Lubricance.
   4. Altercance.
2. To raise self-awareness as a reflective, deliberate witness, a clinician should reflect on her:
   1. Attitudes toward attorneys.
   2. Similarities and differences between her roles and that of attorneys.
   3. Values and ethics as a clinician who is involved in a legal process.
   4. All of the above.\*
3. The adversarial nature of a trial tends to encourage displays of:
   1. Empathy.
   2. Collaboration.
   3. Mutual support.
   4. None of the above.\*
4. The concept of “credibility” as a witness is similar to the clinical attribute of:
   1. Hope.
   2. Empathic understanding.
   3. Genuineness.\*
   4. All of the above.
5. A clinician’s refusal to cooperate with a judge’s ruling in court proceeding may result in charges for:
   1. Expert testimony.
   2. Mens rea.
   3. Constructive defiance.
   4. Contempt of court.\*
6. Some clinicians become frustrated with the rules-orientation of attorneys because the rules can be too:
   1. Fair.
   2. Rigid.\*
   3. Kind.
   4. Genuine.
7. Whereas attorneys and courts tend to focus on hard facts and evidence, treating clinicians tend to focus on the:
   1. Subjective experiences of their clients.\*
   2. Objective truth of their clients.
   3. Lies of their clients.
   4. Legal status of their clients.
8. When clinicians act as witnesses, their professional ethical obligations may conflict with:
   1. Their legal obligations.
   2. Agency policies.
   3. Directions or orders given by a judge.
   4. All of the above.\*
9. Bruce provides Gilda with a presentencing report that helps her receive a lighter sentence for a criminal conviction. Afterward, Gilda asks Bruce to provide counseling services to help her with self-esteem issues. If Bruce accepts her request, he will be involved in a(n):
   1. Breach of confidentiality.
   2. Dual relationship.\*
   3. Unlawful practice of law.
   4. Subpoena.
10. Cindy agrees to act as Peter’s attorney in a trafficking case. Peter later admits that he did sell drugs. Cindy’s ethical responsibility as an attorney is to:
    1. Turn Peter into the police.
    2. Terminate Peter immediately.
    3. Report Peter’s admission to the judge.
    4. Advance Peter’s cause resolutely.\*

# Chapter 3 – First Contact

## Key Words from Chapter

* Confidentiality, privilege (attorney—client, clinician—client, clergy—client)
* Duty to report, duty to protect
* Consent to release information (or assent for minors), voluntary and informed consent
* Compellability as a witness
* Freedom of information, protection of privacy
* Subpoena (issued by court vs. attorney), motion to quash, protective order, search warrant
* Disclosure, production, discovery (depositions, interrogatories)

## Teaching Strategies

This chapter highlights the challenges that clinicians may face, and the skills and strategies that they will need, when an attorney or other person first contacts them about a potential lawsuit or legal proceeding. You could use a problem-based approach to teaching this chapter. Present students with a series of case situations, asking them to consider how they would react to each situation and why. The PowerPoint presentation for this chapter provides sample cases that you could use to stimulate discussion.

To prepare students for various possibilities, show them samples of subpoenas, search warrants, motions to quash, interrogatory questions, consent to release information, and other legal documents. Although they will usually have time to consult an attorney or other professional prior to responding, going through such documents in class can help demystify them.

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

1. *Ethically Challenged* (pages 293-294): This exercise could be used for class discussion or as a takehome assignment. Ensure that students reference their professional code of ethics in relation to confidentiality, informed consent, integrity, conflict of interests, and dual relationships. [10 minutes]
2. *Forensic Intake Questions* (page 294):This question works well for an in-class discussion. Ask students to provide rational for what questions they would ask, for instance, about Maryam’s ability to pay, whether she has an attorney, who asked her to obtain the evaluation, will the evaluation be seen as impartial if she is paying you, who will pay you and how much, and what services will you be expected to provide (just the written assessment, or also oral testimony). Refer back to questions presented in this chapter. [5-10 minutes]
3. *To Call or Not to Call* (page 294): Use this question for an in-class discussion, as you may need to provide input and guidance on the answers. Some of the issues raised by the case include lack of factual information or evidence (due to the clinician’s approach to therapy and documentation) and ability of the clinician to remember key information. Note that being just because the clinician is not a “good witness” does not mean the clinician is a “bad clinician.” [5 to 10 minutes]
4. *To Testify or Not to Testify* (pages 294-295):This question works well as a debate. Have some students argue in favor and some students arguing against cooperating as an expert witness in this matter. [5 minute if discussed together; 15 minutes if each side prepares to debate the question]
5. *Personal Threat* (page 295): This exercise works well for small group discussion. Ask each group to develop a response and provide its rationale (referring to their own professional code of ethics). If students have taken an ethics course, ask them to analyze the case from both deontological and teleological (or utilitarian) perspectives.
6. *Confidentiality Conflict* (page 295): This case works well for large group discussion. Provide students with access to state laws regarding elder abuse. Also, have the students consider whether the elders are particularly vulnerable. Their legal and ethical responsibilities may differ depending on whether the elder person has full mental competence or whether mental competence is compromised by dementia or some other condition.

## Additional Discussion Questions and Exercises

1. *Responding to First Contacts*: Select one of the following scenarios and determine who will play each part in a role-play. People assuming the role of a clinician should use suggestions from this chapter to guide their responses. The person playing the role of attorney, police officer, or client should be somewhat demanding and try to pressure the clinician to cooperate.

a. An attorney named Ms. Fitz calls a psychotherapist named Will, claiming that his client Quinn has been hospitalized involuntarily on the basis that he was homicidal. Ms. Fitz says she needs Will to come to a hearing tomorrow to testify on Quinn’s behalf. Will wants to help his client, but has legal and ethical concerns. Ms. Fitz presses for an immediate answer because Quinn has already been hospitalized and the hearing is tomorrow.

b. A police officer named Officer Duly serves a search warrant to Wauneta, a clinical supervisor in a residential treatment facility for people with schizophrenia. Officer Duly says he has reason to believe that one of the residents has brought explosives into the facility and plans to bomb the state capitol building. Wauneta feels pressured to respond quickly in order to ensure safety, but wants to follow agency protocol and preserve client confidentiality.

c. Hugo calls his clinical psychologist, Sheena, to request a copy of his case records. Hugo says he has filed a claim for workers’ compensation due to an injury and needs the files. Sheena had no knowledge of the workers’ compensation case and is concerned that if some of her records become publicly available, Hugo may be embarrassed. Sheena is also concerned that her family counseling agency may not be happy for her records to be made public.

These role-play scenarios may be used for groups of three (two role-players plus one observer for each group). You could have each group perform a different case and video the role-play to show to the class. [10-15 minutes per role-play, including preparation and feedback]

1. *Confidentiality and Privilege*: Rudolph was injured while working on a rig for an oil refinery. The primary issue for a civil lawsuit is the extent of damages and compensation for Rudolph’s injuries. Rudolph’s attorney hires a neuropsychologist to conduct an assessment of Rudolph’s cognitive functioning and damage as a result of the injuries sustained on the oil rig. During the first meeting with the neuropsychologist, Rudolph asks whether the information he shares will be confidential and privileged. Write out a paragraph that the neuropsychologist could use to explain whether the information is confidential and privileged.

This scenario works well as a role-play, though you will need to spend time with the role-players, helping them prepare to discuss confidentiality and privilege. [20 minutes]

1. *Statutory Privilege*: Select one of the following clinical roles to research: psychotherapist, domestic violence counselor, discharge planner in a hospital setting, addictions counselor, HIV counselor, family mediator, or school counselor. Identify applicable state and federal laws to determine whether communications with clients would be protected by statutory privilege.

This assignment requires research outside of class. You could assign different professions to different students, or if they all come from the same profession than focus on its regulatory framework. You may need to help students identify which federal and state statutes to research, and then let them read those statutes. They could report back to the class or write a brief report. Note that some regulations may pertain to the particular profession (e.g., licensed psychologists) and some may pertain to particular fields of practice (e.g., substance abuse agencies, agencies testing for communicable diseases).

## Test Questions

1. An attorney calls a psychologist and asks for her psychosocial assessment of a client that they share. Before sharing information with the attorney, the psychologist should request a:
   1. Freedom of information application.
   2. Subpoena duces tecum.
   3. Search warrant.
   4. Consent to release confidential information.\*
2. A police officer comes into a group home for children with emotional disturbances and shows the social work supervisor a search warrant. This warrant means that:
   1. The social worker is compelled to testify in court.
   2. The police may be permitted to search the premises.\*
   3. The policy may be permitted to interview all the clients.
   4. The social worker has committed a crime and will lose her job.
3. A subpoena may be issued by:
   1. An attorney.
   2. A judge.
   3. Either an attorney or a judge.\*
   4. Neither an attorney nor a judge.
4. If a client files a freedom of information application with an agency, then the agency may be required to:
   1. Testify in court.
   2. Provide the information to the client.\*
   3. Report the client to the police or other law enforcement authorities.
   4. File a motion to quash the client.
5. If a client poses a serious, imminent risk to self and the clinician calls the police to help protect the client, then:
   1. The client has waived privilege and the clinician can testify in court without a subpoena.
   2. The clinician is guilty of contempt of court.
   3. The clinician is guilty of obstructing justice.
   4. The clinician should still respect the client’s right to confidentiality and should only release information that is required for the immediate protection of the client.\*
6. If an attorney asks a psychotherapist to participate in a deposition for a case involving a client, the psychotherapist should request:
   1. A contempt of court order.
   2. A consent to release information signed by the attorney.
   3. A consent to release information signed by the client.\*
   4. A consent to release information signed by the judge or court administrator.
7. Remy is a licensed mental health counselor. Remy’s client says she plans to blow up a school and all the children in it. Remy has an ethical obligation to:
   1. Protect the potential victims at the school.
   2. Warn the school so that it can take appropriate precautions.
   3. Help the client deal with her issues.
   4. All of the above.\*
8. Pam learns that one of her clients, an 8-year-old, is left home after school without appropriate supervision. Because she suspects child neglect, Pam has a legal obligation to:
   1. Testify against the parent in court.
   2. Report her suspicions of neglect to child protection authorities.\*
   3. Issue a search warrant against the parents.
   4. Issue a subpoena against the parents and file it with the local court.
9. Zelda hands her social worker a consent form permitting the worker to talk to Zelda’s attorney regarding criminal charges against her. The social worker does not think Zelda has read or understood the consent form. The worker should:
   1. Talk to the attorney and offer to help with Zelda’s defense against the criminal charges.
   2. Make sure Zelda understands the consent form and has given voluntary consent prior to calling the attorney.\*
   3. Report the attorney to the court for contempt.
   4. Ask the client for a subpoena that specifically states that the worker is permitted to testify against the client in court.
10. Reid calls his group therapist and says that he is planning to sue her for malpractice. At this point in time, the group therapist should:
    1. Apologize to Reid and pay whatever Reid wants.
    2. Tell the group that Reid is planning to sue her for malpractice.
    3. Obtain legal advice.\*
    4. Sue the client for making threats and breaching the confidentiality of the group.

# Chapter 4 – Preparation for Legal Proceedings

## Key Words from Chapter

* Credibility versus reliability
* Motivation, perception, memory, communication skills, suggestibility
* Obstructing justice, tampering
* Amicus curiae
* Court administrator, court clerk, bailiff, bench, bar, court reporter, fact witness,
* Evidence, relevance (material evidence), admissibility, firsthand knowledge, circumstantial evidence, hearsay evidence, testimonial evidence, documentary evidence, real (physical) evidence, fact evidence, opinion evidence

## Teaching Strategies

For this chapter, it may be useful to take students on a field trip to an actual court hearing. Make arrangements in advance by speaking with the court administrator or court clerk in order to try to identify an appropriate case for the class. You may also be able to arrange meetings before or after court with the judge, attorneys, or other court staff. Ensure your students are prepared for the decorum of the court. Also, you may use the questions in Exercise 1 to help students focus on particular aspects of the court environment, norms, procedures, and personalities.

The materials in this chapter cover a range of different types of legal cases. If your class is primarily concerned with a particular type of case, then you may want to focus on that area (e.g., child welfare, criminal court). Even if students plan to work in one area – say family law – they may be involved in other courts on an occasional basis (e.g., if sued for malpractice).

The chapter begins with a section on gathering information. Ordinarily, attorneys take responsibility for gathering information from each witness. If a clinician is prepared with questions to ask and key points to provide, the clinician is not only empowering himself, but also assisting the attorney and perhaps saving time and money for the client. At the same time, the clinician should be aware of the attorney’s sensitivities, so as not to usurp the attorney’s roles or put her on the defensive.

To illustrate how memory and perception are subject to a variety of challenges, try the following exercise. First, ask students to look around the classroom and make a mental note of everything in the room that is blue. Then, ask them to pick up their pen and paper, and close their eyes. Once their eyes are closed, as them to write down everything in the room that is brown. Some students may scoff at the exercise as being unrealistic, though it does show that when we pay attention to certain things, we may pay less attention to other things. The exercise may also point out issues such as perceptual issues (e.g., if a student is color blind) and how quickly we may forget information (particularly fine details).

If you want to use a problem-based learning approach, then you could divide the class into groups and have each group work through a particular case. Assign various students to play the roles of attorney and clinician/witness. Prepare the attorneys and clinician/witnesses separately and then have them role-play a meeting in which the attorney gathers information from the clinician to help prepare for a case. Following the role-play, you could ask each group whether the attorney should call the clinician as a witness – use the questions in Figure 4.1 regarding memory, perception, motivation, and communication skills as a guide for making this decision.

For the section on children, you could bring children into the class for some role-plays (my daughter loves to come to class and “act”). Students could practice interviewing the children about historical events (e.g., a summer vacation, a special holiday, the child’s favorite move). The accuracy of the child’s perception, memory, and recall depend partially on the child’s age and cognitive development, but also on the style of interview and questioning. Remind students to use the strategies in this chapter for creating a safe environment for the child, minimizing distortions in the child’s memories, and maximizing the accuracy of their information.

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

1. *Reframing versus Manufacturing Evidence* [page 295-296]: This exercise is designed to be a discussion question for the class. You could also use it for a role-play. [5 minutes for discussion; 15 minutes for a role-play]
2. *Believability* [page 296]: You could assign students to work on this assignment in teams or small groups, with or without video. Students could offer each other critique, though self-critique is also useful. You could provide students with a feedback form with criteria such as: displays confidence in tone of voice, provides relatively constant and direct eye contact, and dysfunctional patterns such as takes excessive pauses, speaks too quickly, details do not seem real, poor posture, voice to soft/loud, fidgeting, or vocal hesitations. [30-45 minutes in class, or as a takehome assignment]
3. *Be Yourself* [page 296]: For this exercise, you could ask students to work in teams, and submit a video and a written critique. Alternatively, you could have students use digital video and provide their description and critique on the video itself (using video editing software that permits creation of subtitles or surtitles). [2-5 minutes to explain homework assignment]
4. *Labeling Fears* [page 296]: This exercise works well as a reflective paper or journaling assignment. To help students consider a range of possible fears, you could have students brainstorm possible fears in class, or give them examples of other factors that may produce anxiety or fear. [2-5 minutes to explain homework assignment]
5. *Attorney Trouble* [pages 296-297]: This exercise may be used for large-group discussion. Help students consider factors such as: Stella should not provide legal advice or over-step the bounds of her expertise and mandate; Stella may not have full information about the attorney (she may be acting on biases); the client’s response whether or not Stella expresses her reservations; and the attorney’s response whether or not Stella expresses her reservations. Stella may have to work with the attorney in this case, or in future ones. [5-10 minute discussion]
6. *Guardianship Court* [page 297]: This exercise works well for small-group discussion so students can develop questions that relate specifically to the facts of the case. They may use questions suggested earlier in the chapter, but should try to focus them specifically to the guardianship case in this fact scenario. You could also use this case for a role-play. [10 minute discussion; 20 minutes if including a role-play]
7. *Legal Standards* [page 297]: This assignment is intended for small group discussion or as a takehome assignment. You could help students identify relevant statutes, case law, or journal articles. Factors contributing to informed consent include: the client has more than one choice, the client appreciates the consequences of the choice, the client is able to use rational reasoning, the client understands the situation and alternatives (dementia may inhibit informed consent due to memory impairment, confusion, or disorientation) [10 to 15 minutes for small group discussion]

## Additional Discussion Questions and Exercises

1. *Field Trip:* Identify a court hearing that you may attend, ideally one that involves the testimony of a clinician or forensic witness with a similar professional background to your own. During the hearing, take notes on the following:

a. Draw a sketch of the courtroom, including where each of the following people are located: judge, jury (if any), plaintiff/prosecutor, defendant, bailiff, court clerk, court reporter, public, witness stand.

b. What type of case is this—criminal, civil, family, or other?

c. What are the main issues to be decided in this case?

d. How do the attorneys and witnesses address the judge?

e. What types of questions do the attorneys typically ask of their witnesses at the beginning of the direct examination?

f. Identify two to four examples of challenging questions that attorneys asked during cross-examination. Why were these questions challenging, and how effective were the witnesses’ responses?

g. After observing this hearing, how do you feel toward the judge? The plaintiff’s/prosecuting attorney? The defendant’s attorney?

For this exercise, you could escort the whole class to a court trial or ask students to attend on their own, or help students identify which court cases may be best to attend. If you ask students to attend on their own, provide guidance on how to select an appropriate court, as well as how to identify a useful time to attend (e.g., checking court schedules or talking with a court clerk). You could have students report back to class or submit a written analysis of their experience. [To make the trip worthwhile, they should be prepared to attend for at least 2 hours, and perhaps a full morning or afternoon]

1. *Types of Evidence:* Identify whether each of the following is direct factual evidence, hearsay evidence, real evidence, documentary evidence, or opinion evidence (there may be more than one answer per example). Which pieces of the following examples are likely to be deemed inadmissible as evidence, and why?

a. A social worker writes in her psychosocial assessment that the child has “poor attachment and separation distress” with her mother.

b. A psychotherapist testifies that he did not receive payment from his client.

c. A counselor testifies that her client said he was planning to leave the country.

d. A case manager shows the court a bruise on his arm.

e. A psychologist gives the attorney a copy of a psychometric test with the client’s answers to the questions.

You could assign this exercise for students to complete individually, or go through the questions together in class. The answers are: a. documentary evidence and opinion evidence; b. direct factual evidence; c. hearsay evidence; d. real evidence; e. documentary evidence. The hearsay evidence may be inadmissible unless it fits within an exception for the hearsay rule. The opinion evidence is inadmissible unless the witness is qualified as an expert witness. [5-10 minutes]

1. *Observation*: Identify an upcoming court hearing that you can observe directly, on television, or over the Internet. Ideally, identify a case that involves testimony of clinicians similar to you. Observe the case with particular focus on how the witnesses present themselves and respond to questions. What factors contribute to their likeability, persuasiveness, and credibility? What factors detract?

This assignment is designed for homework. You could ask students to provide a journal-style paper, or have them report their observations and reflections to the whole class. Rather than having students select their own videos, you could provide students with links to specific videos on YouTube, Hula, or elsewhere on the Internet to view. [2-5 minutes to explain homework assignment; 2 minutes per student if you want them to report back to the class]

1. *Silent Child*: Arielle is a licensed mental health professional. She has been hired to evaluate a child for the purposes of a lawsuit against a toy manufacturer of a defective product that caused severe disfigurement. When Arielle began to interview the child to assess for psychological harm, the child was silent. What strategies could Arielle use to engage the child without compromising the credibility or veracity of Arielle’s testimony at trial? What strategies might a treating clinician use to engage the child that Arielle should avoid, and why?

You could use this exercise for classroom discussion or for a role-play. Encourage students to make use of the suggestions in the chapter, but try to apply them specifically to the facts of the case. [5 minute discussion; 15 minute role-play]

1. *Interpreting Information from a Child:* For each of the following scenarios, identify at least two different interpretations of the child’s response to the clinician’s question. Develop a line of questioning the clinician could use to clarify the child’s response without putting the child on the defensive.

a. Clinician asks the young child, “Which arm did you hurt?” The child says, “Left,” but points to her right arm.

b. Clinician asks the 9-year-old, “Do you remember the night your mother passed out on the kitchen floor?” The child says, “No.” Does this response mean that the child does not remember, or the event did not happen?

c. Clinician asks the teenager, “Didn’t you ask for your parents’ permission before going to the family planning clinic?” The child smiles, winks, and says, “Of course I did.”

For this assignment, you could go through one example with the large group and then have the class work through the other examples in small groups. [10 minutes]

## Test Questions

1. The credibility of a witness in a legal proceeding depends on the witnesses:
   1. Motivation.
   2. Perception.
   3. Memory.
   4. All of the above and more.\*
2. An AMICUS CURIAE is defined as a:
   1. Hostile witness.
   2. Piece of documentary evidence based solely on fact.
   3. Court clerk or bailiff.
   4. Friend of the court.\*
3. In general, for evidence to be admissible in court, it should be based on:
   1. Firsthand knowledge.\*
   2. Secondhand knowledge.
   3. The testimony of a documentary witness.
   4. Immaterial evidence.
4. The role of a court reporter is to:
   1. Provide information to media such as television, newspapers, and the Internet.
   2. Document or record evidence provided in court.
   3. Summarize the daily proceedings in court.
   4. Ensure that all witnesses affirm or swear to tell the truth.
5. OPINION EVIDENCE refers to:
   1. Facts provided by a witness.
   2. Information based on a witness’s best recall.
   3. Information based on a witness’s assessment or interpretation of facts.\*
   4. Written reports or documentary evidence.
6. Riley does not want his certain pages of his case records to be released in court, so he rips shreds them and throws them away. Riley’s actions are an example of:
   1. Breaching client confidentiality.
   2. Tampering with evidence.\*
   3. Dual relationships.
   4. Witness suggestibility.
7. When a clinician interviews a child for the purpose of presenting the child’s information in court, the clinician should be particularly careful about asking leading questions because of:
   1. The law against hearsay evidence.
   2. Unauthorized practice of law.
   3. The suggestibility of children.\*
   4. The inadmissibility of real evidence.
8. In a courtroom, the BENCH refers to:
   1. The attorneys and where they sit.
   2. The court clerks and where they sit.
   3. The judges and where they sit.\*
   4. The jury members and where they sit.
9. TESTIMONIAL EVIDENCE refers to information provided to the court:
   1. On paper.
   2. By an attorney who summarizes a witness’s thoughts.
   3. By a witness who has firsthand knowledge of the information.\*
   4. By a court reporter who summarizes the key facts of the case in order to make the trial process run more efficiently.
10. An attorney meets with a clinician prior to court and asks the clinician to provide more details about her sessions with the client. The attorney wants to know if the clinician can provide further details in order to assess whether the witness has:
    1. Good motivation.
    2. Good memory.\*
    3. Good karma.
    4. Good opinions.

# Chapter 5 – Oral Testimony at Trial

## Key Words from Chapter

* Direct examination, cross-examination, re-direct, re-cross
* Hostile witness
* Refreshing memory
* Challenging credibility
* Establishing doubt
* Logic funnel
* Leading question
* Feigned ignorance or pleasure
* Cut-off
* Rapid fire
* Intentional ambiguity
* Implying impropriety
* Rattling the witness

## Teaching Strategies

Reading about and talking about how to present oral testimony is helpful. To truly integrate the suggestions in this chapter, however, demonstrations and experiential exercises are vital. As you go through the materials in this chapter, demonstrate various questioning techniques used by attorneys during examination and cross-examination, as well as how witnesses can respond in an ethical and effective manner. You could show video clips, use live role-plays, or a combination of both. For longer role-plays, prepare one group of students for the attorney role and the second group for the witness role, then match the attorneys and witnesses to role-play the scenario using various strategies presented throughout the chapter. You could provide students with an evaluation tool or observation checklist with criteria such as: use of clear language, appropriate eye contact, confident tone of voice, conveys honesty in answers, openly admits not knowing, nondefensive responses, appropriate pacing, and so on. You could also provide a list of behaviors to avoid, such as raising voice, going off on tangents, demonstrating disrespect, or arguing with the attorney.

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

1. *Cultural Considerations* [page 297]: This scenario is intended for use for large-group discussion. Encourage students to think about issues such as hearsay, credibility, and possible challenges to the validity or weight of the evidence. Presenting information about the training, qualifications, and procedures used by the translator may be helpful.
2. *Faulty Examination* [pages 297-298]: This assignment works well as a small-group, in-class exercise. Allow students to add facts to make the story more interesting, including sensory details. Have students read their narratives in class, and provide feedback based on coherence, interesting, sensory detail, and authenticity (realistic/genuine). In particular, what aspects of the testimony may grab the attention of a judge or jury? You could give examples of an interesting narrative – e.g., Brodsky, 2004 gives an example of explaining what it is like to have a low I.Q. (mitigating factor in sentencing of a convicted man). Brodsky asks jurors to think about what is it like to have a hearing impairment. “You know everyone around you is speaking, but you don’t understand everything they are saying.” This example shows how a witness may provide information in a vivid manner the jurors can easily appreciate
3. *Ethics Issue* [page 298]: This scenario may be used for large-group discussion. Encourage students to reference relevant sections of their professional code of ethics. Consider issues such as honesty, respect, dual relationships, and conflict of interest.
4. *A Colleague’s Misbehavior* [page 298]: This scenario is also intended for in-class discussion, although it could be used for a written assignment. Students should consider what their role is, as a professional and as a witness in this case. They should also consider what type of responses should be reserved for court, and what types of responses should wait until after the court process is over. Encourage students to refer to their professional code of ethics (e.g., should they automatically report dishonesty or other problems to the professional association, or are there other steps to take first).
5. *Tough Cross-Examination Questions* [pages 298-299]: For this assignment, you could go through the first scenario in class and then ask students to analyze the other cases in small groups. For Case b., students should note that the accused person has not yet been found guilty of rape. An attorney may object to the wording before the clinician answers… provided that the clinician gives the attorney time to object before answering (thus, the best answer for the witness may be “no answer”). You could also role-play these scenarios in class [15 minutes for discussion; 30 minutes for role-play].
6. *Confidentiality after Trial* [page 299]: This question is designed for class discussion. Students should note that the obligation to maintain confidentiality (as much as possible) continues even if the witness has to breach some confidentiality at trial. The ethical obligation is quite clear, but there may be pragmatic considerations (e.g., ask students if they would still provide “no comment” if a network or book publisher offered a large sum of money for an exclusive interview). Also, would it ever be advisable to ask the client for permission to “go public?” [5 minutes]
7. *Cross-Examination* [pages 299-301]: This exercise could be used as either a small-group in-class assignment or as a take-home written assignment. [20-30 minutes as an in-class assignment]

## Additional Discussion Questions and Exercises

1. *Lay Speech:* Assume the following testimony segments are factually correct, but that the language is inappropriate for an audience of lay jurors who are not trained in mental health or scientific research. Revise the testimony so that conveys the same information in a more natural and more easily understood manner.

a. “When I administered the instrument for assessing homicidal ideation, said client declined to respond to four of the 10 items on the scale, rendering the results of the assessment indeterminate.”

b. “The defendant’s mental capacity to appreciate the nature and consequences of her acts has been compromised by the traumatic brain injury she incurred during the automobile collision. From a neurological perspective, her general cognitive processing, and the executive functioning in particular, have been compromised.”

c. “Given the severity of this pupil’s dyslexia, as well as her apparent capacity to learn versus her current level of academic achievement, the school provided an utterly inadequate educational milieu.”

This assignment works well as a small group exercise. You could assign different scenarios to different groups and have them report back to the class. Some suggestions for students include: use shorter sentences, plain language, and concrete examples rather than just abstract concepts. They could also try to use a narrative (storytelling) approach. [15-20 minutes]

1. *Just Plain Sick*: Assume you are scheduled to testify in a mental health hearing, for a client who has been involuntarily committed due to homicidal ideation (thoughts and plans). The morning that you are supposed to testify, you wake up with a fever of 103 F and other symptoms of the flu. You feel too sick to testify, but you also do not want to deprive your client of your testimony or delay the hearing (which would mean that the client may need to stay in a locked facility for additional time). What should you do, and why?

This exercise is intended for large-group discussion, though you could have students do it as a journaling exercise. Encourage students to think about the following factors: their ability to provide testimony in an effective manner, their level of contagiousness, the importance of their testimony, whether another person can provide similar testimony on their behalf, who they are working for, agency policy and professional ethics, and how the attorney/judge may respond when they find out about the illness. [5 to 10 minute discussion]

1. *Liar, Liar*: Assume you are a treating clinician. You are waiting to testify in a hearing in which one of your clients has been charged with possession and trafficking cocaine. While on the stand, your client testifies that he has never used cocaine. You know, from toxicology reports at your agency, that the client has used cocaine. Prior to testifying, do you tell the client’s attorney or the prosecuting attorneythat the client was lying? Why or why not? Assume now that you are testifying and the prosecuting attorney asks you if the client has ever used cocaine? Why or why not? What type of evidence would you be providing if you said that the client was using cocaine?

This exercise has been developed for large or small-group discussion. Students should consider their role as a treating clinician, whether they are compellable as witnesses, and how to deal with any issues related to confidentiality and privilege. You could have students assume that the client has waived privilege, assuming the clinician will provide positive testimony. Note the differences in the clinician’s obligations depending on whether the clinician is not on the stand versus being on the stand and being asked specific questions. Also, invite students to discuss whether they have any firsthand evidence, or whether their information is hearsay.

## Test Questions

1. During a CROSS-EXAMINATION, an attorney may ask:
   1. Open questions.
   2. Leading questions.
   3. Yes or no questions.
   4. All of the above.\*
2. When an attorney is asking questions during the direct examination, the witness should:
   1. Answer concisely.\*
   2. Provide long, detailed responses that go beyond what the attorney is asking.
   3. Answer all questions, making up information in order to avoid seeming ignorant.
   4. Pretend that she has never met the attorney, even if they have met and discussed the testimony.
3. If a cross-examining attorney feigns pleasure in your response to a question, you should:
   1. Ask the attorney to stop smiling.
   2. Tell the judge that the attorney is feigning pleasure, but is not really happy about your response.
   3. Maintain your composure and continue to answer questions in a direct, honest manner.\*
   4. Laugh out loud to show that you know the attorney is just joking.
4. After being cross-examined as a witness, you should:
   1. Get off the witness stand as soon as possible so you won’t be asked any further questions.
   2. Remain on the witness stand in case there are further questions, such as during a re-direct examination.\*
   3. Wipe your brow with a handkerchief to demonstrate to the court that you have been working very hard to provide the right answers.
   4. Ask your client if it is okay to step down.
5. When you are called to testify, you may be asked to make an affirmation. This means that you are being asked to:
   1. Swear an oath on a Bible.
   2. Sign a document promising to tell the truth.
   3. Make an oral statement promising to tell the truth.\*
   4. Cross your heart and plead for the mercy of the court.
6. If you are asked questions during a RE-CROSS, the attorney is limited to asking questions about:
   1. Why you have been so cross or hostile.
   2. Matters raised during the re-direct examination.\*
   3. The client’s confidential information.
   4. Your credibility as a witness.
7. Under the general rules of court procedure, an attorney may use the cross-examination to challenge your credibility as a witness by:
   1. Asking questions that put your memory or perception into doubt.\*
   2. Threatening you with violence.
   3. Fabricating malicious information about your personality and presenting them as evidence against you during the cross-examination.
   4. All of the above.
8. A cross-examining attorney asks Helga, “Isn’t it true that your client was involved in terrorist activities, and you were sympathetic to his cause. Please answer the question with a simple *yes* or *no*.” Helga agrees with the first part of the question, but disagrees with the second part of the question. Helga should respond to the question by saying:
   1. “You are asking an intentionally confusing question.”
   2. “Yes.”
   3. “No.”
   4. “Yes, my client was involved in terrorist activities, and no, I was not sympathetic to her cause.”\*
9. If a clinician has a general memory about a meeting with a client, but does not remember certain details, the clinician may respond to a question during cross-examination by:
   1. Asking the attorney to read the clinician’s client records.
   2. Asking the judge to read the clinician’s client records.
   3. Asking permission to refer to client records to refresh her memory.\*
   4. Asking the client to join her on the witness stand to help fill in the gaps.
10. In order to demonstrate honesty, witnesses should strive to:
    1. Answer questions as quickly as possible.
    2. Take a minute or two to think about the question before responding, remembering that silence and suspense will help jurors trust your testimony.
    3. Look up in the air or toward the back of the courtroom while thinking about how to answer each question.
    4. Answer promptly if possible, but you may let the court know if you need a moment to think about the answer in order to ensure your answer is as accurate as possible.\*

# Chapter 6 – Clinical Records

## Key Words from Chapter

* Records – contents, organization, maintenance, disposal
* *Subpoena duces tecum*
* Information recorded contemporaneously
* Limitations period
* SOAP

## Teaching Strategies

Your students may have significant experience and training in keeping records. However, their focus for record keeping may have centered on keeping records for clinical purposes. The material in this chapter can be used to help them understand the legal implications of how they document client contacts, as well as how they organize, store, and dispose of records.

One way to impress students with the importance of appropriate record keeping is to ask them to role-play a brief interview and document it (prior to providing them with training on how to document for legal purposes). Then, role-play a brief examination and cross-examination based on the records (e.g., a child protection interview with parents suspected of child neglect). Also, note how documentation for legal purposes may be more important in some agencies (child welfare, probation, parole, mental health facilities for involuntary clients, agencies with clients involved in risky behaviors) than for other agencies (working with voluntary clients, in areas where involvement in legal processes is less likely).

Another exercise that is particularly useful for this chapter is to present students with faulty notes, have them critique the notes, and then have them re-write the problematic sections of the notes.

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

1. *Local Laws and Ethics* [page 301]: This exercise is intended for homework, as it requires outside research. You could provide students with the URL or links to relevant state legislation and professional codes of ethics. Also, students should look at agency policies concerning these issues. [could take 15 minutes for students to report findings back to class]
2. *Deficient Records* [page 301]: This exercises works well for large or small group discussion. Some of the issues to discuss include lack of clarity, lack of detail, and missing information in the case notes. What type of distress was the client experiencing? How long did it take for the nurse to come? What was the name of the nurse? What type of assessment did the worker conduct? What steps did the worker take to ensure Mr. Short’s safety? For this exercise, you could bring a practicing attorney into the class to help answer the questions raised by the students for this case. You could also role-play it as if it were a real preparation meeting for a trial. If students ask for additional facts for the context of the case, you could let them know the nursing home is being sued by the family, or there are criminal charges related to neglect. Note that a clinician can always add to progress notes, provided that the additions are done a transparent and honest manner (e.g., noting that these notes were added at later date). [10-15 minutes for discussion; 20 minutes if used as role-play]
3. *To Note, or Not to Note* [page 302]: The different case scenarios in this exercise highlight the importance of the context of practice, as issues related to sexual abuse, HIV status, addictions, etc. have specific laws that govern confidentiality and privilege. This exercise could be used for small group discussion or as a takehome assignment (giving different students different scenarios). [allocate 20 minutes if you want to cover all the scenarios in class].
4. *Court-Ready Files* [pages 302-303]:This exercise is designed for large group discussion. Alternatively you could divide the class into two groups for a debate. You could ask students if Hoshi's approach to record-keeping is ethical and legal (consult local laws and codes of ethics). Is Hoshi's approach a deliberate attempt to avoid being called to trial to testify? How might informed consent play into this scenario; for instance, would it make any difference if Hoshi had Garth sign a service agreement that specified the terms of service, the limited case notes, and an agreement by the client not to subpoena Hoshi or her records? Is it possible that a client like Garth might be trying to set up Hoshi to provide evidence (e.g., what if he was malingering)? [10-15 minutes]
5. *Raw Test Scores* [page 303]:This exercise could be used for large group discussion or as a takehome paper. If covering the case in class, you could provide students with relevant laws and ethical standards and ask them how to apply these laws and standards to the fact situation. Some issues include: the court’s desire for full disclosure of information/evidence, copyright protections and agreements, competence to read and interpret test results, professional mandates, and risks of misuse of data and inappropriate interpretations. [10-15 minutes]

## Additional Discussion Questions and Exercises

1. *Forensic versus Treatment Notes*: The following two segments of progress notes are for the same client, but are written by different practitioners: one is a treating clinician and the other is a forensic expert. Identify which notes are appropriate for clinical purposes and which ones are appropriate for forensic purposes. Describe the differences between these notes and explain why these different approaches to record keeping are appropriate for each type of professional.

a. Office meeting with client for purposes of obtaining client’s informed consent to services. Explained nature of cognitive-behavioral therapy, including purpose, goals, benefits, and risks as related to dealing with depression. Client did not appear to understand information provided, so therapist offered to meet with client and husband together. Client agreed to invite her husband into the session . . .

b. Office meeting to evaluate the mental capacity of Ms. Rosena Ing to determine competency to stand trial. Obtained permission from Ms. Ing and her attorney prior to the meeting to video the interview. Reviewed purpose and process of meeting Ms. Ing, notifying her that the video report may be used as evidence at trial. Administered the Competency to Stand Trial Evaluation Instrument (attached). Client received an overall score of 87, indicating lack of rational understanding of the criminal court proceedings against Ms. Ing. Her responses to items 21 and 22 indicated she did not understand the differences between pleading not guilty, pleading guilty, and being found incompetent to stand trial. In response to open-ended questions about the process of pleadings and plea bargaining, Ms. Ing said, “I let my attorney deal with that. He said I could take a plea deal, but I didn’t really know what he was talking about.”

This exercise could be used for small groups or for a homework assignment. Factors for students to consider include: use of plain language definitions for a client, sticking to the facts for a forensic report, indicating list of records reviewed and why versus taking client’s word for something; and use of standardized tests versus clinical impressions based on open-ended interview. [15-20 minutes]

1. *Self-Critique*: Select one of your own client’s files and randomly select a progress note that you have written in the file in the last three months. Critique the way that you wrote the progress note in terms of: clarity, appropriate level of detail, nonjudgmental language, stating facts as facts, stating opinions as opinions, and supporting opinions with direct observations. Re-write the progress note to take care of any deficiencies (from both clinical and legal perspectives).

This exercise is written as a homework assignment. If you are asking students to share any information with yourself or the class, make sure the students obtain any necessary approvals from their agencies and from their clients. Also, make sure they delete any identifying information. Alternatively, you could provide students with samples of progress notes (again, if they are based on real clients, make sure you modify or disguise any identifying information). [allow at least 15 to 20 minutes if you want students to critique the progress notes in class]

1. *Gifts as Records?* Irina is a children’s psychotherapist. One of her clients, Gabe (7), gives her a picture that he drew as a gift. The picture depicts Gabe’s family and appears to show his parents yelling at him in one frame, and then playing nicely with him in the next. Assume agency policy allows Irina to keep the picture. What should Irina do with the picture? Should she hang it on her office wall, should she put it in the client’s file, should she take it home, or should she dispose of it? What are the benefits and risks of each course of action? If her records for Gabe are subpoenaed, it the picture subject to the subpoena?

This scenario could be used for small group discussion. Encourage students to consider issues such as confidentiality, privilege, the child’s mental capacity to provide consent or assent, parental consent, and the likelihood of the clinician’s files being subpoenaed (e.g., if the clinician knew the parents were involved in a heated child custody or child protection case).

1. *Disability*: A client tells her social worker, Zoё, that she was in a car accident and that ever since she has been having severe sleep disturbances. The client says that she has had to miss work because of the trauma and lack of sleep. Assume Zoё writes in the client’s progress notes, “Client was in a car accident causing severe sleep disturbances. Due to trauma and lack of sleep, client has had to miss work.” What are the problems with what Zoё has documented? Assume the client’s boss fired her for missing work without good reason and Zoё’s attorney called you to testify on the client’s behalf. What issues may arise during the direct or cross-examination in terms of the progress notes?

You may use this assignment for large or small group discussion. Encourage students to consider the manner in which Zoё documented what she heard. Was the information based on direct information or hearsay? What might have been a better way to document the information, or should Zoё document this information in any manner? [5 to 10 minutes]

## Test Questions

1. Wanda is a psychotherapist who receives a court issued SUBPOENA DUCES TECUM. This document requires Wanda to:
   1. Report abuse to appropriate authorities.
   2. Meet with attorneys for both parties prior to the court trial.
   3. Submit her client’s records to the court.\*
   4. Shred her client’s records, immediately.
2. Rudy is a marriage therapist who has one case file per family. In one case, his clients Sandra and Luke separate. Sandra then asks Rudy for a copy of her case file to use in an upcoming civil lawsuit that does not involve Luke. Rudy should try to protect Luke’s right to confidentiality by:
   1. Shredding all the case files.
   2. Telling Sandra that she has no right to her case file.
   3. Rewriting the case file to make Luke look good.
   4. Ask Luke if he is willing to provide consent to release of the case files.\*
3. Yarika is running an anger management group for clients referred by various probation officers. The contract between the clients, probation officers, and Yarika suggests that Yarika may provide copies of case records to the probation officers upon their request. To protect client confidentiality to the extent that is legally and ethically prudent, Yarika’s should:
   1. Refuse to keep any case records.
   2. Maintain one case record with confidential information about all the clients in the same file.
   3. Maintain separate case records for each client in the group.\*
   4. Post all client records on a blog.
4. A statute of limitations in a particular state says that the limitations period is 6 years. This law means that a person may NOT:
   1. Keep client records beyond 6 years.
   2. Initiate a lawsuit after 6 years from the date of the injury or cause of action.\*
   3. Serve clients who are less than 6 years old.
   4. Go to prison for more than 6 years.
5. In client progress reports using the SOAP framework, the S stands for:
   1. Statements of factual evidence.
   2. Subjective information.\*
   3. Streamlining data.
   4. Standard practice.
6. Tracy writes in her client progress notes, “Client agrees to practice daily affirmations.” This sentence is an example of:
   1. Objective information.
   2. Plans.\*
   3. Assessment.
   4. Purpose of the meeting.
7. Billie writes in her progress notes, “Client’s hands felt cold and wet.” This sentence is an example of:
   1. Objective information.\*
   2. Plans.
   3. Assessment.
   4. Purpose of the meeting.
8. Homer writes in his progress notes, “Client is at high risk for suicide within the next 24 hours.” This sentence is an example of:
   1. Subjective information.
   2. Plans.
   3. Assessment.\*
   4. Standard practice.
9. Bonita writes in her progress notes, “Client says she feels angry about losing her job.” This sentence is an example of:
   1. Subjective information.\*
   2. Plans.
   3. Assessment.
   4. Standard practice.
10. Dottie has a home visit with a client on June 5 but does not write her client’s progress notes for this meeting until June 11. From a legal and ethical perspective, Dottie should:
    1. Date her notes June 5.
    2. Date her notes June 11.
    3. Indicate the home visit was June 5 and that she wrote her notes June 11.\*
    4. Split the difference (because it is not that important) and date her notes June 8.

# Chapter 7 – Expert Testimony

## Key Words from Chapter

* Expert witness
* Opinion evidence
* Qualifying as an expert
* *Daubert* test
* Consultant
* Educator
* Fact-opinion expert
* Reasonable degree of certainty
* Ultimate issue
* Retainer

## Teaching Strategies

Chapter 7 is the longest chapter in the book, though you can break it down into smaller sections for different classes. For instance, you could cover the “Roles of Expert Witnesses” and “Admitting Expert Evidence” in one class; then “Selecting Experts” and “Contract for Services” in a second class, and “Direct examination” and “Cross Examination” in a third class (depending on how much time you want to devote to this chapter). As explained earlier in the Instructors’ Manual, you may want to provide more time for this chapter for advanced-level students who are more likely to take on the role of expert witnesses. If you are teaching a more basic course on the roles of clinicians as witnesses, you might want to introduce students to the material in this chapter, but focus more on chapters that pertain to fact witnesses.

For discussion of the Roles of Expert Witnesses, it may be useful to bring in guest speakers who specialize in each of these roles (consultant, educator, fact-opinion expert). The guests could provide students with stories and examples of how they perform these roles, including the challenges and the rewards of acting as an expert in a legal proceeding. The role of consultant to a legal proceeding is relatively new and still developing for many of the mental health professions. For discussion of roles, highlight the similarities and differences between these roles, and discuss the ethical and legal issues pertaining to dual relationships, confidentiality, privilege, and conflicts of interest (particularly for a witness who is also a treating clinician). Also, discuss how treating clinicians tend to view themselves as allies or advocates for their clients, and how these roles may conflict with the ability to provide expert opinions and testimony in an objective, credible manner.

The topic of “Admitting Expert Evidence” is complex, particularly given the evidentiary rules regarding the requirement that expert evidence must be delivered by an expert witness. You may reassure students that the attorneys and judges are responsible for determining what evidence is admissible and who qualifies as an expert. However, if students can understand the basic rules around admissibility of expert evidence, it is more likely that they can present themselves and their testimony in a manner that facilitates admissibility. This chapter quotes the Federal Rules of Evidence for admissibility of expert evidence. Make sure you also provide students with your state’s rules. Although the *Daubert* test for admissibility of expert evidence is used in many states, there is variation across jurisdictions (and sometimes even with a jurisdiction depending on how different judges interpret and apply the relevant case law and statutes). Although clinicians should be prepared for challenges to their qualifications, note that, in many cases, clinicians may be accepted as experts without any challenges. If it is clear that a particular witness has expertise, and her/his opinions are relevant and credible, then the opposing attorney has little to challenge.

To clarify the *ultimate issue doctrine*, explain how the primary responsibility for making decisions such as “guilt” in a criminal case is up to the judge (or jury in a jury trial). Note that mental health professions are *not* expert in providing *legal opinions*, so they should not provide legal opinions. Stating that a particular person is guilty of a crime is a legal opinion. Mental health professionals can give opinions, within the scope of their expertise, that come close to the ultimate legal issue in question. For instance, an expert on human motivation may be able to testify about the motivation of an accused person in a murder trial. By providing evidence that the murder was premeditated, the witness is providing an opinion that will help the judge or jury determine the ultimate issue – still, it is up to the judge or jury to make the final decision. To help students clarify what is admissible or not admissible in this context, give them several examples to consider (e.g., would a psychotherapist be allowed to testify in a mental health proceeding that a client with hallucinations *poses serious risk to others*? Would a play therapist be permitted to testify that *a child is in need of protection* from abusive parents? Would an addictions counselor be permitted to testify that *a client died due to an overdose of sleeping pills*? Would the same counselor be permitted to testify that *the doctor was negligent* in prescribing the sleeping pills? In each situation, discuss what types of opinions fall within the witness’s area of expertise, what types of opinions do not.)

For the section on Selecting Experts, you could provide students with examples of case situations and ask what types of expertise and what types of qualifications that an attorney would be looking for when hiring an expert (e.g., a civil lawsuit by a woman against a man for physical assault, in which the woman is seeking damages for emotional pain and suffering; or a human rights case in which the attorney is trying to prove that gay men and women are able to raise healthy, functional children, and that their children are at no greater risks than children of heterosexual parents). Another approach is to ask students to consider what areas of forensic human behavior or mental health they would like to pursue as areas of expertise, and then what types of training, supervision, licensing, and experience they would need in order to qualify and excel as an expert witness in that area. Finally, students could critique themselves in terms of their strengths and limitations as an expert witness across a broad range of characteristics (e.g., confidence testifying, ability to articulate clearly and concisely, professional education, professional knowledge, forensic assessment skills, perceived objectivity/bias, how you are viewed by professional colleagues, professional publications, Internet presence).

When teaching about “Contract for Services” you could make use of the letters and agreements in Appendices A, B, C, and D, or other precedents that you or professional colleagues in your community use. Note that while many treating clinicians use no written contract or a fairly general written contract, a detailed written contract may be vital for forensic experts. The forensic expert needs to establish clear guidelines and boundaries regarding confidentiality, what information will/may be shared in court or with others, how clients and attorneys may communicate with the expert, who is responsible for fees, how you will avoid dual relationships, how you will stay within your area of expertise, and who is the client. Clear contracts and protocols are essential – not just to avoid malpractice lawsuits, but to promote the most effective use of your time and to foster the most effective forensic assessment processes. At their best, forensic assessments can help people resolve legal and social conflicts in a fair, effective, and efficient manner. When things go awry, problematic forensic assessments can lead to lawsuits, frustration, higher levels of conflict, wasted time, wasted money, and harm to the psychosocial wellbeing of the people being assessed, and their families and other support systems. Clear, comprehensive contracts for services cannot guarantee that the forensic assessment process will be perfect, but they can help prevent many problems.

The sections on Direct Examination and Cross-Examination lend themselves well to role-play exercises. Students generally appreciate viewing examples of testimony before taking on the witness roles themselves. You could use videos that are available on the Internet (e.g., [YouTube](http://www.youtube.com/)) or from legal advocacy programs (e.g., check your local law school library, the [American Bar Association](http://www.americanbar.org/aba.html), or the [National Institute for Trial Advocacy](http://www.nita.org)). You could ask students to role-play the attorneys and role-play the expert yourself (it may be helpful to give the students sample questions). Then, when practicing, go through various stages of the direct and cross-examination in small segments. For the direct examination, the segments could include: qualifying an expert, testifying about the nature of the expert’s role and how the expert gathered evidence, detailing the chronology of events, testifying about factual information gathered, entering and discussing any documents or records as evidence, testifying about opinions and how the opinions were gathered , discussing the strengths and limitations of the opinions provided, and making a concluding statement. For the cross-examination, you could facilitate role-plays based on different types of cross-examination strategies: impugning the witness’s qualifications; impugning the witness’s objectivity/impartiality; challenging the methods used to gather evidence, challenging the expert’s perception or memory, challenging the expert’s theoretical or research bases, or asking for an inappropriate opinion. You could also have students refer back to the suggestions for examination and cross-examination in Chapter 5, as these apply to both fact witnesses and expert witnesses.

You could give the following chart to students observing the role-plays, so they may provide detailed, behavior-oriented feedback.

**Feedback for Role-Plays with Expert Witnesses**

Expert witness’s name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Observer’s name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Please provide your classmate with feedback on the following competencies. Provide examples to demonstrate where your classmate demonstrated the skill well, or where there were problems or room for improvement:

1. Explains qualifications in a clear, concise manner:
2. Accurately describes **methods of gathering information**:
3. Engages judge/jury through **interesting** manner of presentation:
4. Provides **facts as facts**, and opinions as **opinions based on facts**:
5. Uses **appropriate language** (clear, understandable, defines complex terms):
6. Responds to cross-examination in an **assertive, nondefensive, nonaggressive** manner:
7. Stays within **area of expertise**:
8. Presents as **credible, knowledgeable, likeable, confident, succinct, and trustworthy**:

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

1. *Weak Evidence* [page 303]: This scenario is based on an actual case. You may need to explain to the class why a victim of domestic violence may not express fear of a batterer (defense mechanism, splitting, coaching, etc.), although this is not the focus of the exercise. The issue is that the research on witness credibility in such cases is mixed. This exercise may be used for small or large-group discussion. Encourage students to think about how to Lavern can present information in an honest, concise manner, without looking like she lacks confidence or expertise. When the research on a psychological phenomenon is mixed or unclear, it is difficult for an expert witness persuade a judge or jury to accept either point of view. [10 minutes]
2. *Informed Consent* [page 303]: This exercise could be used as a homework assignment or for in-class discussion. If you discuss the situation in class, you may need to provide students with relevant sections of their code(s) of ethics. You could also ask students to compare the standards in the code of ethics for treating professionals versus a code for forensic professionals.If you want to discuss the issues in terms of broad ethical principles, rather than specific standards in codes of ethics, encourage students to consider the principles of honesty/integrity, commitment to clients, and the effectiveness of their assessments (which is related to professional competence and service). [10 minutes for in-class discussion]
3. *The Whole Truth?* [pages 303-304] This exercise could be used for small group discussion, or for a debate (select different students to represent each side of the issue in the debate). Factors to consider for this discussion or debate include: one’s legal and ethical obligations under the oath or affirmation provided, one’s role as an expert witness rather than an attorney, ethical principles of integrity, the accused’s right to a fair trial, and the integrity of one’s profession (not just the individual). Consider: if you were a witness who wanted to help a particular client, would you withhold information that would go against the client’s case? Is there a difference between “lying” and “failing to disclose information,” even though you were never asked directly for that information? What are the short- and long-term implications of failing to disclose? [15-20 minutes for a debate, including preparation]
4. *Impugning a Colleague* [page 304]:For this exercise, you could go through one example with the whole group, then have small groups work on the other scenarios and report back to the class. Encourage students to consider whether their answers for the different scenarios are consistent (i.e., do they have consistent rational for determining whether to “provide dirt.”). Encourage students to think about the following factors: honesty, integrity, respect for the dignity and worth of all people, the attorney’s role, who is the consultant’s client, practitioner’s commitment to the client, your role as an consultant vs. advocate, your role as a potential witness, short and long-term consequences of cooperating with the attorney, and other possible options for responding to the attorney and the desire to have the client released from the psychiatric facility. If you have guest lecturers in your class who have acted as consultants, you could ask them how they would respond to such a request. [15 minutes]
5. *Faulty Testimony* [pages 304-305]: For this exercise, you could go through the first example in class, and then have students work on the rest individually (or in small groups) before reporting back to the class. [15-20 minutes]
6. *Metaphors* [page 305]: It is difficult to constructing metaphor on the spot, so you will need to provide students with sufficient time for thought and creativity. You could provide students with some examples of metaphors that you have used (consider the following simile: “Having attention deficit disorder is like having a cluttered room. The person’s thoughts are disorganized, making it very difficult to focus and find what he wants at any particular moment”). This exercise works well for small group work or as a takehome assignment. Ideally, your students are familiar with one or more of the situations provided in this question. If not, you could give them online references (e.g., <http://www.mayoclinic.com/health/DiseasesIndex/DiseasesIndex> for mental disorders), or provide students with other examples that are more closely related to their training and professional background. [15-20 minutes]
7. *Cross-Examination Critique* [pages 305-307]:For this assignment, you could go through a couple of examples in class, and assign the rest for small group discussion or homework. You could also use this exercise as practice for a test in which you provide a similar transcript for students to critique (e.g., a transcript from an actual trial). [15-20 minutes for small group discussion]
8. *Mitigation* [pages 307-308]:For this assignment, you could provide students with a copy of the state laws regarding mitigating factors. If you do not want to use “capital punishment” as the criminal offense, you could switch to another criminal offense (e.g., trafficking, rape, unlawful confinement). The mitigating factors for such offenses may not be spelled out in legislation, so students would have to research the case law, law journals, etc. This assignment may be done as a takehome assignment (with students doing the legal research) or as an in-class discussion (if you provide students with the mitigating factors to consider). [10 minutes for in-class discussion]

## Additional Discussion Questions and Exercises

1. *Fact or Opinion*: Identify which of the following statements is fact evidence or opinion evidence. Explain whether a clinician would have to be qualified as an expert in order to present such evidence in court:
   1. “The plaintiff in this personal injury case is faking his psychological symptoms.”
   2. “Ms. Evans forgot to put on her clothes and walked out of the nursing home wearing only her pajamas.”
   3. “The client’s current risk of suicide is low because he does not have a specific plan to kill himself.”
   4. “I saw the parent hit the child with a belt.”
   5. “Multiple regression uses a quantitative index of correlation that may be used effectively to predict future events, such as the likelihood of recidivism.”

You can go through these examples relatively quickly in class, or have students work on them individually first.

* 1. “Faking” is an opinion
  2. “Forgot” is an opinion, but “walking out the door wearing pajamas: is an observable fact.
  3. “Low risk of suicide” is an opinion. The client’s having a plan could be a fact that the expert heard from the client.
  4. “Seeing the parent hit” is an observable fact.
  5. Explaining the effective uses of multiple regression is an opinion.

1. *Qualifications:* The purpose of this assignment is to prepare yourself for a *voir dire* in which you will be asked questions in relation to your qualifications as an expert witness. Select a type of case in which you might be called to provide expert testimony. Review the questions below and take brief notes on possible answers. Then role-play the *voir dire* with another person playing the attorney asking these questions.
   1. “Please state your name and current position.”
   2. “Please tell the court about professional education, training, and experience.”
   3. “What courses have you taken in relation to . . . [specify a topic related to the case you have identified]?”
   4. “What were your grades?”
   5. “What types of therapies or interventions do you use?”
   6. “What qualifies you to provide such interventions?”
   7. “What is your ethnic background?”
   8. “In what other cases have you been qualified as an expert witness?”

For this assignment, you could specify a type of case for each student group depending on their backgrounds (e.g., child abuse, criminal hearing to determine the defendant's motivation, immigration hearing, or a hearing to determine if a person has experienced workplace discrimination). This case may take considerable time for students to prepare, so you could provide an in-class demonstration (with you as the expert), and then ask students to prepare themselves for a role-play in which they will play the expert in the next class. If your university has a law school, you could team up with the law school trial advocacy class or moot court program, to have your students practice giving testimony to law students.

1. *Objectivity*: Explain how each of the following strategies contribute to the objectivity of a forensic expert’s investigation and findings:
   1. Personally review all client records.
   2. Do not rely on assessments conducted by other professionals.
   3. Consider information that may disconfirm your initial impressions.
   4. Avoid mixing forensic and treating roles.
   5. Maintain thorough records.
   6. Identify potential personal biases.

This exercise may be used for large-group discussion. The purpose of the exercise is to encourage students/practitioners to conduct their ongoing practice in a manner that fosters their credibility and effectiveness on the witness stand (not just waiting until they are on the witness stand). Note, for instance, that if a clinician is unaware of her biases, she may impose her cultural beliefs or assumptions when conducting a forensic assessment (e.g., that children should be raised to be independent and move out of the family home when they turn 18 or finish college).

1. *Qualified Expert Witness*: Refer to the Indian Child Welfare Act (ICWA) at <http://www.childwelfare.gov/systemwide/courts/icwa.cfm>. Under this act, what is a *Qualified Expert Witness*? What is the purpose and function of a QEW? What does a person need in order to qualify as a QEW?

This exercise may be useful for students working in child welfare, particularly in areas where they will be working with Native American children and families. The Indian Child Welfare Act has specific definitions for a Qualified Expert Witness. You could discuss what might be minimal qualifications under this statute, and how these qualifications may not be sufficient for the witness to be a true expert on Native American culture and child welfare issues.

## Test Questions

1. Rolo has been hired to help an attorney select jurors who are sympathetic to the accused person’s situation. In this situation, Rolo would play the role of a(n):
   1. Consultant.\*
   2. Treating clinician.
   3. Advocate.
   4. Educator to the court.
2. Dolores has been called to testify in a rape trial about why some victims recant their original stories. Dolores has not met the accused or the victim prior to trial. In this situation, Dolores would play the role of a(n):
   1. Consultant.
   2. Fact-opinion expert.
   3. Advocate.
   4. Educator to the court.\*
3. Brandon is an addictions counselor who has been called to testify about the client’s progress in addictions counseling and likelihood to remain abstinent. In this situation, Brandon would play the role of a(n):
   1. Consultant.
   2. Fact-opinion expert.\*
   3. Advocate.
   4. Educator to the court.
4. Under the *Daubert* test for admissibility of expert evidence, opinion evidence should be obtained through:
   1. Broad public acceptance.
   2. Sound scientific methods.\*
   3. Trial and error.
   4. Procedures that have an error rate of less than 10%.
5. In order for opinion evidence to be admissible in court, the evidence must be:
   1. Delivered by a qualified expert.
   2. Helpful to the trier of fact.
   3. Relevant.
   4. All of the above.\*
6. Courts may NOT admit expert evidence that is based on:
   1. Scientific data.
   2. Professional experience.
   3. A layperson’s opinions.
   4. Evidence that has received widespread acceptance within a relevant scientific community.
7. When a court says that for opinion evidence to be admissible, the expert should be able to testify within a reasonable degree of certainty, the court means that the expert should be able to testify with:
   1. 100% accuracy.
   2. At least 90% accuracy.
   3. An error rate of no more than 20%.
   4. At least 50% certainty, with the specific level of certainty to be decided in relation to the type of opinion being offered and what is accepted as a reasonable degree of certainty within the profession.
8. If expert evidence is admitted, then the judge (or jury in a jury trial):
   1. Must accept the expert’s evidence as truth.
   2. Should only accept the expert’s evidence if there is corroborating evidence.
   3. Still has the obligation of determining the credibility and weight of the evidence.\*
   4. Should accept the expert’s evidence as the truth unless these is another expert who provides conflicting evidence.
9. Waldo testifies that he is a mental health clinician with a master’s degree in counseling. A cross-examining attorney asks Waldo, “Wouldn’t your level of expertise be greater if you had a doctoral degree in counseling or psychology?” This question is an example of the cross-examining attorney trying to:
   1. Impugn the credentials of the expert witness.\*
   2. Challenge the facts upon which the expert is relying.
   3. Challenge the scientific basis of the opinion that the expert is providing.
   4. Ask a question that goes beyond the expertise of the expert witness.
10. Vicki testifies that people with borderline personality disorder are more likely than the general population to have children with documented psychiatric disorders. A cross-examining attorney asks Vicki, “Given that your research methods did not include random sampling of families, how can you be sure that your findings are valid or reliable?”
    1. Impugn the credentials of the expert witness.
    2. Challenge the facts upon which the expert is relying.
    3. Challenge the scientific basis of the opinion that the expert is providing.\*
    4. Ask a question that goes beyond the expertise of the expert witness.

# Chapter 8 – Documentary Evidence

## Key Words from Chapter

* Affidavit
* Forensic report
* Affiant / Deponent
* Attest
* Exhibit
* Presentence report

## Teaching Strategies

This chapter focuses on three types of documentary evidence that may be used in court: affidavits, reports, and exhibits. Help students understand the different uses of each of these types of documents. Note that reports may or may not be made specifically for use in court (e.g., a child protection worker who creates a report knowing that it will be used in court, versus an addictions counselor who writes a psychosocial assessment of a client that the client later asks to be used in a court case). If a report is being written specifically for use in court, then the clinician needs to pay particular attention to stating facts as facts, providing the factual basis for opinions, and stating the source of each piece of information. Note that reports may include hearsay information, such as information received from other clinicians, doctors, teachers, or family members. If the information is contested in court, then those sources of information may need to testify.

As with other chapters, you could focus on a specific type of legal proceeding (documents used in family law or juvenile justice cases) or you could discuss documents used in a broad range of cases. Going through actual reports, affidavits, and exhibits may be the best way to help students synthesize and apply the material in this chapter. The questions in this Instructor’s Manual include a sample report for an adoption study. You could also obtain sample reports from local clinicians in order to provide students with samples based on templates and regulations in your state or judicial district. You may use Figure 8.1 in the textbook (page 229) to provide students with practice critiquing and editing reports to be used for forensic purposes. For an example of a presentence report, see <http://www.tnwp.uscourts.gov/forms/prob001.pdf>.

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

1. *Attesting* [page 308]: This assignment works well with small groups [5-10 minutes]. For the items involving second-hand information, you could ask students to reframe the statement so that it would be based on a direct observation. Students may need to add facts to make this possible. The answers are as follows.
   1. Firsthand observation.
   2. Secondhand information (unless the worker actually observes the practicing… but the statement says that the practicing occurred between sessions).
   3. Secondhand information (unless the worker actually observed the abuse… more likely, the abuse is being reported by the client or his wife).
   4. Discontinuing therapy is a firsthand observation. Whether or not therapy was having its intended effects is an opinion.
2. *Interview with a Professional* [page 308]: This exercise requires homework. The report and critique could be presented to the class [e.g., 10 minutes per student or group to present to the class], or written up as a major assignment. Encourage students to write thank you letters to the professionals they interview. If they believe it is appropriate, they could provide the professionals with feedback based on what they have learned in this course, with a focus on the strengths of the professional’s report writing. As an alternative to this assignment, students could be asked to do a literature search and identify report formats and samples specific to their area of interest. This alternative may be useful for identifying peer-reviewed and accepted formats. The advantage of interviewing a local professional is to see the actual formats being used in the student’s county, state, or judicial district.
3. *Actuarial versus Clinical Predictions* [pages 308-309]: If you want to use this exercise for class discussion, you may need to explain the meanings of an actuarial prediction and a clinical prediction [10 minutes]. Otherwise, you may assign this question for homework and instruct the students to research the similarities and differences between these types of predictions, as well as identify tools they can use to measure the risk of re-offending.

## Additional Discussion Questions and Exercises

1. *Useful Documentary Evidence*: For each of the following scenarios, describe what type of documentary evidence might be useful.
   1. During a malpractice lawsuit against a psychologist, the client claims that the psychologist breached confidentiality by providing personal information to the client’s health insurance company. The psychologist claims she only sent the insurance company what was required under the Health Insurance Portability and Accountability Act.
   2. Roger is a family therapist who is testifying in a case involving a client charged with murder. Roger finds that explaining the client’s family background is very complicated, given that the client has had five marriages, three divorces, 14 stepchildren, and four generations living in one household.
   3. Paul has applied for Social Security benefits based on functional impairments related to mental retardation. He was originally denied benefits on the grounds that his mental retardation was not so severe as to prevent him from obtaining gainful employment. A social worker who conducted vocational testing concludes that Paul is malingering to avoid having to work.
   4. Honi has been convicted of a drug-related offence and is preparing for an upcoming hearing to determine an appropriate sentence for a drug-related conviction. Honi’s attorney suggests that they ask her addictions counselor to testify about her good character and progress in treatment. The counselor will be out of the country and unable to attend the hearing.

For this exercise, you could assign different groups to work on different scenarios, with each group reporting back to the class. Encourage students to think of a broad range of documents that may be useful: affidavits, forensic evaluations, clinical reports, client progress notes, billing records, videos, digital records, psychological test results, psychosocial assessments, ecomaps, genograms, etc.

1. *Role-Play and Report*: For this role-play, assign one person to play the clinician (Claire/Cliff) and one to play a person applying for asylum in the United States (Astrid/Archie). The focus of the interview is to determine whether the asylee genuinely fears persecution in her country of origin and is therefore unable or unwilling to obtain protection of the state. During the role-play, Astrid will explain that she has fled from her native country of Barskonia because of state-sponsored torture, including incarceration without due process, verbal intimidation, extended periods of starvation, and confiscation of property. Initially, Astrid explains that she has been singled out for torture because she is a member of an ethnic minority, the Greenebletters.[[3]](#footnote-3) Astrid’s story will include many discrepancies in her accounts, providing different reasons the state officials have mistreated her and different reasons that she sought refuge in the United States. Claire may ask questions to determine which information is valid and which is bogus. Following the role-play write a report based on the information gathered during the interview. For the purposes of this assignment, assume the case will be heard by a federal court in your judicial district. Include the major headings listed in this chapter for writing a report. Proofread the report to ensure it meets the criteria listed in Figure 8.1. Remember that when a victim of torture tells different stories within this same interview or to different interviewers, this may not mean the victim lacks credibility (Barrett & George, 2005).

For this assignment, you may need to break the assignment down into smaller components and have students work on one component at a time. First, assign one person to play the clinician and one person to play the asylee. Help each develop their background for the role-play. The clinician should develop a list of questions or topics to guide the interview. The asylee should develop additional background information, particularly as it applies to the asylee’s reason for fleeing her country of origin. Students who observe the role-play could be instructed to take notes that they can use to prepare the report. Then, you could help students write the report by focusing on one section of the report at a time (e.g., referral and purpose, qualifications of the evaluator, identifying information, dates of contact, methods of gathering information, relevant history, present circumstances, opinions and recommendations, and conclusion). You could provide students with a specific template or word processing document with the headings that you would like them to complete.

As an alternative to having the students perform the role-play, you could provide the students with a video of a forensic interview (conducted by yourself or others) that you could also save for future classes. If students do their own role-play, they could also use a video of the role-play to assist with writing their reports.

1. *Termination of Parental Rights*: Sven is a child protection worker who has been working with Jeannie, the mother of a 2-year-old child, Rodin. Sven writes an evaluation report to be submitted at a hearing to determine whether Jeannie’s parental rights should be terminated. In the report, Sven states that Rodin has severe developmental challenges. Sven does not believe that Jeannie is fit to parent Rodin because of her alcohol use, lack of parenting skills, and refusal to consent to social services for Rodin to help him with his developmental challenges. To inform his report, Sven administered an instrument to assess parent–child attachment and discovered a lack of attachment between Jeannie and Rodin. Sven suspects this lack of attachment is due to extended periods when Jeannie has left Rodin in the care of neighbors and friends. Rodin also reports that a physician examined Rodin recently and found evidence of physical abuse (scars from being hit with a belt on his back).

a. Based on the information above, identify five examples of *factual* evidence and five examples of *opinion* evidence.

b. For each example of *opinion* evidence, identify two examples of *factual* evidence that could be used to substantiate the opinion (you may make up additional facts).

c. Identify one example of *hearsay* evidence and discuss whether this hearsay evidence should be included in Sven’s report.

d. What is the *ultimate issue* to be decided in this case? Given this ultimate issue, identify the most important examples of evidence that Sven could provide in order to help the judge make a fully informed decision.

This assignment could be used for in-class discussion or for a take-home assignment. Given that the concepts of factual evidence, opinion evidence, and hearsay evidence have been discussed in prior chapters, students should be familiar with them and how to classify different pieces of information or evidence. The concept of “ultimate issue” is described in Chapter 7, though you may need to review this concept and how it applies in the context of writing reports. Remind students that they should not provide legal opinions (unless they are licensed attorneys). They should try to present facts and opinions in their reports in a manner that helps the judge or jury make good decisions (i.e., fact evidence that helps the judge or jury determine what happened, and opinion evidence that helps the judge or jury understand the expert’s professional opinions, knowledge, research, or recommendations).

1. *Critique and Correct*: Review the following sample of an adoption home study report.[[4]](#footnote-4) What are the primary legal issues in this case? What is the role of the report in relation to these issues? Identify the strengths and limitations of this evaluation in terms of the following criteria: clarity, conciseness, comprehensiveness, relevance to the legal issues at stake, nonjudgmental language, separating facts and opinions, substantiating opinions with direct observations or research, logic, objectivity, and helpfulness to the judge. Identify two paragraphs that you think are particularly problematic and rewrite them to correct the problems.

**Adoption Home Study Report[[5]](#footnote-5)**In the Matter of the Adoption of Linus Black  
Case Number: FC-542-339

**Referral and Purpose**

On behalf of the Purple Flamingo Adoption Service, I, Sharmilla Prince, respectfully submit this adoption home study report for the Circuit Court of the Sixtieth Judicial Circuit in Slade County, Elfiya, for case of “In the Matter of the Adoption of Linus Black.” This matter was referred by the court to Purple Flamingo Adoption Services on April 3, 2012, to conduct an adoption home study. Linus was born in Deltamar City, EF, on January 1, 2000. Linus has been living in foster care with Randall Firth and his life partner, Carl Brogan (the Petitioners), since September 14, 2011. The purpose of this report is to evaluate whether it is in Linus’s best interests to be adopted by Randall and Carl.

The Department of Children and Families (DCF) placed Linus with the Petitioners shortly after Linus’s parents died in a car accident. According to DCF, Linus has no biological relatives. DCF is Linus’s current guardian. The Petitioners state that Linus has been “thriving” in their care and they would like to offer him a permanent home and family. DCF says Carl and Randall are not allowed to adopt because Elfiya Statute §383.50 does not permit two cohabiting adults to adopt unless they are legally married. Randall and Carl say that state law does not permit same-gender couples to marry, but that this should not bar them from adopting Linus. They contend that Statute §383.50 is discriminatory and unconstitutional. This home study report does not purport to provide a legal opinion on the constitutionality of the state adoption laws. This report documents Linus’s best interests from a psychosocial perspective.

**Provider and Qualifications**

My name is Sharmilla Prince and I am employed as an adoption social worker by the Purple Flamingo Adoption Service. I earned my Master of Social Work degree along with a Certificate in Child Welfare from Deltamar University in August 2001. I have been conducting adoption home studies for Purple Flamingo Adoption Service since September 2001. I have been teaching a course on Child Welfare at Deltamar University School of Social Work since 2008. I certify that I am is authorized to perform adoption home studies in the State of Elfiya, United States of America, according to Chapter 63 of the Elfiya Statutes. The agency’s license (License #2843DF9, expiration date December 31, 2012) and curriculum vitae are attached.

**Identifying Information**

The petitioners for adoption, Randall Firth and Carl Brogan, reside at 539 NE 353 Street, Deltamar City, EF, 99483 (Telephone: (545) 555–7880; E-mail: Firth-Brogan@6trex\*.com). They have been Registered Domestic Partners in Slade County since February 14, 2009, when they moved into their current home. Both Randall and Carl are American citizens. Carl was born in Boise, ID, on March 25, 1986. Randall was born in Trinidad, TX on July 15, 1985. The attorney acting on their behalf is Thelma Fletcher, Suite 243, 443 Carriage Road, Deltamar, EF, 99483. The Guardian Ad Litem acting on Linus’s behalf is Sophie Silverman, 35 East 87 Avenue, Rio Delta, EF, 99454.

**Dates of Contact and Procedures for Gathering Information**

I originally contacted the Petitioners, Randall and Carl, by telephone on April 4, 2012, to explain the nature of the home study. Following this phone call, I mailed the Petitioners a package of documents with an informed consent form and assessment questions, to review prior to meeting. I conducted a home-study assessment interview with the Petitioners at their home on April 18, 2012. I met with Randall, Carl, and Linus together and individually. The joint interviews permitted observation of interactions. The separate interviews permitted each person to respond privately without the immediate influence of the others. The total meeting time for the home visit was 125 minutes. I used a semistructured interview method, using the Home Study Investigation Form, attached as Appendix 1. On April 20, I conducted telephone interviews with Linus’s teacher (Ms. Stephany Romer), pediatrician (Dr. Laura Gill), and basketball coach (Mr. Olaf Paterson) . . .

**Relevant Family History**

Randall Firth is 5’ 9” tall, weighs 148 pounds, and has brown hair. He is an only child born to Werner and Gladys Firth. Gladys works an electrical engineer and Werner is employed as a manager in a clothing store. Randall was raised in Boise, ID. Randall describes his family life growing up as very happy. The only major conflict he recalled was at age 16, when he told his parents that he was gay. Randall says his parents tried to convince him that he was heterosexual and took him to a psychologist to “straighten me out.” The psychologist worked with the whole family and helped Werner and Gladys accept their son’s sexual orientation. Randall says his parents are still a strong source of support in his life. Randall moved to Deltamar in 2007 to accept a job as an electrician with Deltamar Power & Light. He continues to work with this company, earning an annual salary of $89,000 . . .

Carl Brogan is 6’ 1” tall, weighs 165 pounds, and has blond hair. He is the eldest of five children born to Tammy and Norm Brogan. Although Carl was born in Trinidad, TX, he and his family moved around throughout his childhood because Norm was enlisted in the Marines. Carl describes his childhood as somewhat chaotic, having to go to new schools and make new friends each time his father was stationed in a different state. The family moved to Deltamar when Carl was 14 and has remained here . . .

Carl and Randall said they met in May 2008 while both were volunteering at an after-school program for troubled youth. Both found that they enjoyed children and had much in common. They began cohabiting in February 2009 and have wanted to raise a child ever since. They qualified as Foster Parents in September 2009. Linus is the second foster child who has lived with them. Their first foster child was returned to his parents, pursuant to DCF’s decision to reunite the family . . .

Linus was born to Francis and Jeremy Black. He was born and raised in Deltamar. He describes is childhood “very normal, two parents, a kid, and a dog.” Linus’s school records indicate that he excelled in math and sciences, but struggled with reading. Following his parents’ death, Linus’s school performance suffered. He failed his comprehensive exams and was held back in the fourth grade . . .

**Present Circumstances**

The Petitioners and Linus live in a one-story, three-bedroom home in a residential neighborhood in east Deltamar. The home has kitchen, dining room, playroom, living room, and laundry room, with ample space inside the house and in the yard for the needs of the family. During the home visit, the house was neatly organized, with contemporary furniture upstairs and exercise equipment in the basement. The Petitioners describe their neighborhood as very family oriented, with schools, parks, and a community center within walking distance of their house . . .

The Petitioners describe Linus’s transition into their home as “pretty rocky for the first few months.” They note that Linus was quite withdrawn and they were not sure how to help him adjust. They said they worked closely with the social worker to show Linus they were there for him, but also gave him space until they could build more trust with them. They say they had a major turning point with Linus when he was having a problem with bullying at school. Linus was present when Carl and Randall met with the school guidance counselor. They believe that when Linus saw them stand up for him, Linus started to believe that they were truly looking after him and his interests . . .

The Petitioners state that their main challenge in parenting is time. Both have full-time jobs, so they need to juggle their work schedules. They also depend on Carl’s parents to help out with after-school activities, such as basketball and guitar lessons . . .

For discipline, Carl and Randall say they both believe in using consequences that are related to the misbehavior, for instance, being responsible for cleaning up after oneself, losing snack privileges if Linus does not eat a proper meal, or having to do extra chores if chores are skipped one day. Linus says Carl and Randall are quite strict with chores. He says he is responsible for cleaning his room, helping with laundry, and raking the lawn . . .

**Standardized Testing: Findings and Interpretations**

Carl and Randall each completed to the Quality of Parenting Instrument, a 20-item questionnaire designed to measure the quality of parenting (Gretchen & Sykes, 2012). Carl received a score of 95 out of 100. Randall scored 92. These scores indicate both Petitioners possess strong parental qualities in relation to responsiveness, emotional support, and maintaining appropriate boundaries . . .

**Research on Parenting by Gay Men**

One of the issues raised by DCF is whether it is in Linus’s best interests to be raised by a gay male couple. Research comparing the parenting of different-sex couples and same-sex couples suggests that sexual orientation has no impact on the growth and development of children in their care. (Sample, 2011). Vasquez (2010) conducted a meta-analysis of prior studies, analyzing the results of 22 recent studies with the most rigorous research methods. Vasquez concluded that there were no significant differences in the children’s school performance, attachment (emotional connection) with their parents, quality of peer relationships, or drug and alcohol use. Vasquez also concluded that children raised by gay or lesbian parents were no more likely to be gay than children raised by heterosexual parents. Two differences between the groups related to the age of the parents and their household incomes. At the time that children entered their lives, on average, gay men were about two years older than heterosexual men, and gay men had average annual incomes that were $3,200 more than their heterosexual counterparts . . .

Some research claims that gay men are more likely to sexually abuse children than heterosexual men (Regemen, 2007; Simon, 2010). The findings of these studies have been questioned due to the lack of documentation on how the research was conducted, as the reported results do not indicate how the subjects were chosen for the sample and what sources the researchers used to verify instances of sexual abuse. The results of this research have all been discredited by other, more rigorous, studies which show that gay men are not more likely than heterosexual men to sexually abuse children (Koenig, 2009; Solomon, 2012) . . .

**Opinion and Recommendations**

Given the information that I have gathered from the home study, interviews, collateral contacts, and review of the research literature, it is my opinion that Linus has bonded well with Carl and Randall and that he will continue to flourish under their care. Linus is doing well at school. His teachers and physician report that he is a confident, happy child, and has a positive relationship with both of the Petitioners . . .

My recommendation is that it is in the best interests of Linus for the Petitioners to be approved for adoption.

DATED this 24th day of May, 2012.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sharmilla Prince, MSW

For this assignment, you could divide the class into groups and have different groups assigned to critique and revise different paragraphs. Alternatively, you could go through the report, line-by-line, asking for critique and suggestions.

One possible addition to this report would be reference to policy statements by the American Psychological Association, the National Association of Social Workers, or the American Association of Pediatrics regarding ability of same-sex couples to adopt/parent. Students could also explore actual research, such as that of Stacey and Biblarz, to include in the report.

The nature of this report – on whether gay men should be able to adopt – could raise issues regarding attitudes, religious beliefs, and potential biases. You could engage students on a discussion of these issues as they apply to their professional role in this case.

## Test Questions

1. A social worker conducts a home study for an elderly person who may need protective services. The written evaluation of the home study is an example of a(n):
   1. Affidavit.
   2. Forensic report.\*
   3. Exhibit.
   4. Interrogatory.
2. A psychiatrist signs a legal document attesting to certain facts and opinions provided in a criminal case involving a person charged with armed burglary. The legal document is an example of a(n)
   1. Affidavit.\*
   2. Forensic report.
   3. Exhibit.
   4. Interrogatory.
3. A young client drew a picture of her family as part of an art therapy activity. The picture is entered into evidence at a mental health trial. The picture is an example of a(n):
   1. Affidavit.
   2. Forensic report.
   3. Exhibit.\*
   4. Interrogatory.
4. In an affidavit, a clinician is allowed to attest to:
   1. Direct observations of the client.
   2. Professional opinions about the client.
   3. Actions taken by the clinician.
   4. All of the above.\*
5. In a forensic report, a clinician should state:
   1. Only opinion evidence.
   2. Only forensic evidence.
   3. Only fact evidence.
   4. Both fact evidence and opinion evidence.\*
6. When writing a forensic report, if a clinician wants to rely on information gathered by another professional in order, the clinician should:
   1. Exclude the information because it is second-hand information.
   2. State the information as if the clinician gathered it through firsthand observation.
   3. State the information and specify the source of the information.\*
   4. Prepare himself for a malpractice lawsuit.
7. If an attorney writes an affidavit and asks a clinician to sign it, the clinician should:
   1. Report the attorney to the state licensing body for unprofessional behavior.
   2. Refuse to sign the affidavit, because the clinician did not write it herself.
   3. Sign the affidavit without question, as the attorney is legally responsible for the truth of the information and opinions stated in the affidavit.
   4. Read the affidavit carefully, ask for corrections to the information if necessary, and do not sign it unless it accurately reflects her observations and opinions.\*
8. A vocational counselor is writing an affidavit and wants to include information learned from Justin Adams’ prior employer, Mrs. Knapple. Which of the following statements would be most appropriate for this information?
9. Justin Adams’ contract was terminated by Mrs. Knapple on February 9, 2012.
10. Mrs. Knapple advised me, and I verily believe, that she terminated Justin Adams’s contract on February 9, 2012.\*
11. Although this may be hearsay, I verily believe that Justin Adams’ contract was terminated by Mrs. Knapple on February 9, 2012.
12. Mrs. Knapple advised me that she terminated Justin Adams’ contract on February 9, 2012.
13. A psychiatrist writes a forensic report stating, “Ms. Roth is at high risk of committing suicide.” The report should also include:
    1. The facts upon which this opinion is based.\*
    2. The opinion upon which this fact is based.
    3. The reason that the psychiatrist holds this bias against the client.
    4. None of the above.
14. In a forensic report, a PRIMER may be used to:
    1. To paint the background of the report in a different, luminous color.
    2. Educate the tribunal about the clinician’s areas of expertise.\*
    3. State the facts of the case.
    4. State the recommendations for how the judge should determine the case.
15. In a forensic report, a PRIMER may contain the following information:
    1. The theoretical basis of the assessment.
    2. Key concepts and definitions.
    3. Explanations of actuarial data.
    4. All of the above.\*

# Chapter 9 – Claims Against Clinicians

## Key Words from Chapter

* Malpractice / professional negligence
* Duty of Care
* Standard of Care
* Damages
* Proximate cause
* Civil lawsuit
* Criminal offense
* Unauthorized practice of law
* Disciplinary hearing
* Breach of an ethical standard / violation of an ethics code
* Professional licensure / certification

## Teaching Strategies

This chapter highlights three types of actions against clinicians: criminal cases, civil lawsuits, and professional disciplinary hearings. Help students to understand the different purposes of each of these types of actions (punishment/retribution, deterrence of crime, protection of the public, compensation, promoting professional behavior, holding professionals accountable, correcting unprofessional behavior, etc.), and how one act may lead to actions in more than one forum. You could also discuss agency-based recourse for clients (informal and formal grievance processes).

To facilitate discussion, you could use a single case scenario and demonstrate how the clinician may end up defending himself in more than one forum. For instance, consider a psychologist working in a residential treatment facility for people with anorexia (an eating disorder). A particular client, Kerry, says she has had enough and wants to end it all. The psychologist panics and locks Kerry in her room, until he can decide what to do. Kerry decompensates further and starts to self-mutilate. When the psychologist returns, he finds Kerry lying on the floor with deep wounds on her arms and legs.

* What types of actions might arise against the psychologist?
* If the case went to criminal court, what types of charges could be raised and what would the prosecution need to prove?
* If Kerry sued the psychologist for malpractice, what would she need to prove?
* If Kerry filed a complaint with the psychologist’s licensing body, which specific ethical standards could she allege that he has breached? [you could change the profession of the psychologist if the students in the class come from a different profession]
* For each type of case, consider whether the psychologist should contact an attorney, terminate services with the client, inform his insurance company, and/or provide an apology to the client.

Note that many cases resolve through negotiation or mediation, without the need for a trial. Even in criminal court, many defendants plead guilty and cooperate in order to have a reduced sentence. Still, clinicians should be prepared for the possibility that a case will go to trial and take steps to ensure they are effective witnesses (e.g., take notes of key incidents as they happen, consult an attorney to learn about the nature of the case against you and what you can do to defend yourself, use stress reduction and mental preparation strategies, review strategies for responding effectively during the direct examination and cross-examination).

Having a mock trial or professional review hearing provides students with an experiential understanding of these processes (you could divide the class into three groups – one to conduct a criminal trial, one to conduct a civil trial, an done to conduct a professional review hearing). If your university has a law school, you could work with them to design and implement a moot court. Even if you are not able to have a joint class with law students, you might be able to use the law school’s moot court room to conduct your role-plays.

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

1. *Malpractice in Adoption* [page 309]: This case works well for large-group discussion. To avoid complications regarding sovereign immunity, you could tell students to assume this is a private adoption agency. If you want to engage the class in a discussion of sovereign immunity, you could discuss this issue in the context of this case, assuming Amanda worked for a state agency.For discussion of malpractice, help students apply the following criteria: did Amanda owe the Santana’s a duty of care? If so, why? What was that duty of care? How did Amanda breach that duty of care? How did the breach of the duty lead to damages suffered by the Santanas? Were those damages the proximate cause of the breach? If so, why? For a discussion of fraudulent misrepresentation, discuss how the Santanas would need to prove that Amanda knew the information was false and that she intentionally misled them. How would the court quantify damages in this case? [5-10 minutes for a large-group discussion]
2. *Suit by a Third Party* [page 309]: If you go through the “Malpractice in Adoption” case in a large group, then you could assign this case for small group discussion, or as a take-home assignment. Students can apply a similar set of questions to determine whether Harriet should be held liable for malpractice. [5-10 minutes for a large-group discussion]
3. *Faulty Referral* [page 309]: This assignment is designed for in-class discussion. The roles that an independent psychologist could play are: consultant, expert witness (educator of the court), and coach for witnesses. Refer students to Chapter 7 on expert witnesses if they need a refresher on expert roles. [5 minutes]
4. *Risk Management* [pages 309-310]: This exercise may be used for in-class discussion or homework. Examples of risk management methods include: use of consultations or supervision, documentation, refusing services outside areas of competence, establishing clear professional boundaries, obtaining legal advice, and bringing a second person along for home visits. Ask students how specific methods may have been helpful in each particular case situation. [5-10 minutes for a large-group discussion]
5. *Components of Malpractice* [page 310]: If you have discussed either the “Malpractice in Adoption” or “Suit by a Third Party” case in class, then you could assign these cases for homework. Otherwise, it would be helpful to go through at least one case in class. [5-10 minutes for a large-group discussion]
6. *Legal and Ethical Advice* [page 310]: This exercise is a homework assignment, though you could have students report their findings back to the class. Also, you could have students work in pairs. Some people feel embarrassed or anxious about asking how much professionals charge for services. You could role-play a telephone interview in class to demonstrate how to ask questions or to help students build confidence before they call actual attorneys and lawyer referral services. You could also designate different students to contact different attorneys or organizations (e.g., the local bar association, a consumer advocates association, a lawyer referral service, an attorney in criminal law practice, an attorney specializing in malpractice cases, a legal aid office, and a law school that includes a legal clinic).[2-3 minutes per student if you have them report back to class]
7. *Mandated Dual Relationship* [pages 310-311]: This exercise presents a challenging ethical dilemma. Divide students into groups to work on it, and encourage them to apply the sections of their codes of ethics related to dual relationships, as well as complying with the law (including court orders). You could provide students with a framework for analyzing and resolving ethical dilemmas (e.g., identify the issues, identify the conflicting ethical standards/principles/duties/laws, identify goals, brainstorm options, and determine which option satisfies the most important obligations)

## Additional Discussion Questions and Exercises

1. *Malpractice Prevention*: Obtain the policies and procedures from your agency, or from an agency recommended by your instructor. Review the policies and procedures to determine whether they cover the following issues in a sufficient manner: confidentiality, informed consent, dual relationships with clients, record keeping, responding to a client who may harm herself or others, and managing other risks. Critique the agencies policies in terms of what it covers well, what areas need improvement, and how you would propose amending or adding to the policies to reduce risks of malpractice.

This exercise works well as a group project. Basically, students will conduct an ethics audit on an agency’s policies and procedures. Ideally, it is an agency where one or more of the students work. You could have students provide a written assessment or an oral presentation in class.

1. *Disciplinary Hearings*: Identify a professional licensing board or accrediting body to which you belong, or would like to belong. Locate the laws or policies governing this board or accrediting body and answer the following questions:
2. How does a person file a complaint (which websites provides the complainant with information, what forms are used, who may file a complaint, and what information is required)
3. Which of the following types of disputes are covered by the licensing board/accrediting body: fee disputes, breach of confidentiality, dual relationships, personality conflicts, cultural insensitivity, rudeness, lack of informed consent, lack of professional competence, boundary issues, and abandonment of clients?
4. What process does the licensing board/accrediting body use for handling complaints (describe the steps, and who is responsible for which actions)?
5. Are attorneys allowed to participate in any adjudicatory hearings or mediation processes?
6. Are the decisions of the licensing board/accrediting body subject to appeal, and if so, to whom?

This exercise is intended as a homework assignment. Alternatively, you could bring a representative from a licensing board or accrediting body to class; invite students to ask question related to the topics in this assignment.

## Test Questions

1. A psychologist provides a client with legal advice. The psychologist’s advice is an example of:
   1. Assault on a client.
   2. Unauthorized practice of law.”
   3. A civil lawsuit.
   4. Living up to a standard of care.
2. During a couple’s counseling session, a fight between the spouses erupted resulting in physical injury to the wife. The wife sued the counselor for malpractice, claiming that the counselor asked an inappropriate question that prompted the violence. In order to substantiate her claim in court, the wife would need to prove:
   1. The counselor was not properly trained as a counselor.
   2. The counselor’s question breached the duty of care expected for a counselor in a similar situation.\*
   3. The counselor intended to cause the husband’s violent behavior by asking the provocative question.
   4. All of the above.
3. Which of the following processes may be initiated against a mental health professional who states conclusions in a forensic report without having a strong factual basis?
   1. Depositional interrogatories.
   2. Criminal charges.
   3. A professional disciplinary hearing.\*
   4. A human rights complaint.
4. An accredited life coach has consensual sex with a client. The life coach works alone, in a private practice. Assume there is no law prohibiting the life coach from having sex with the client, but the life coach’s professional association has a code of ethics that prohibits sexual relations with clients. Assume also, that the client later decides that having sex with the life coach was a bad idea. If the client wants to take action against the life coach, the client should initiate the action through a:
   1. Professional review process.\*
   2. Criminal court charge, laid by the police.
   3. Grievance with the life coach’s employer.
   4. Human rights tribunal.
5. A social worker encourages a stressed-out client to take a vacation. The client takes the worker’s advice and goes on a mountain climbing trip in the Himalaya Mountains. While climbing a mountain, the client slips and falls, breaking a leg and causing the client to lose $32,000 in wages. Assume that the client can prove the worker’s providing advice breached a standard of care. In order to win a malpractice lawsuit, the client would also need to prove that:
   1. The client followed the advice of the social worker because he wasn’t very smart.
   2. The worker was licensed to practice clinical social work.
   3. The worker’s advice was the proximate cause of her losing $32,000 in wages.\*
   4. The client had no duty of care with respect to listening to the worker’s negligent advice.
6. A psychotherapist asks a client to take a deep breath, hold the breath, and then breathe out slowly. After repeating this exercise several times, the client loses consciousness, falls to the ground, and incurs a concussion. In a malpractice lawsuit, the psychotherapist may be found legally responsible for the client’s injuries if the client can prove that:
   1. The manner in which the psychotherapist engaged the client in this exercise was not consistent with what a reasonable, prudent psychotherapist would do in similar situations.
   2. The psychotherapist had never tried the breathing exercises on her own, prior to inflicting them on an unsuspecting client.
   3. The client had informed consent and knew the risks and benefits of the breathing exercises.
   4. The client was highly unusual, in that most people do not pass out and fall on their heads just because they breathing in and out in a deliberate manner.
7. A school counselor informs a student that anything the student says will be held in strict confidence. The student discloses an embarrassing story and the counselor sells the story to a television station. The student’s family could take action against the counselor for:
   1. Breach of a contract of confidentiality
   2. Breach of the ethic of confidentiality.
   3. Breaching school policies or laws.
   4. All of the above.\*
8. A mental health counselor is financially stressed, so she pads the number of hours that she bills Medicare in order to receive more money. The counselor’s submission of a dishonest bills is an example of:
   1. Unauthorized practice of law.
   2. Unauthorized practice of clinical mental health.
   3. Fraud.\*
   4. A boundary violation and a dual relationship.
9. If a client files a complaint against you with your professional licensing board, you should:
   1. File a complaint against the client, to show you mean business, too.
   2. Terminate the client immediately and have no further contact with the client or his family.
   3. Consider terminating work with the client, and offer a referral to the client so the client is not abandoned.\*
   4. Admit you did wrong, even if you believe that you acted in a completely professional and competent manner.
10. If a client initiates a professional complaint against you, you should consider contacting:
    1. Your attorney.
    2. Your professional association.
    3. Your professional liability insurance provider.
    4. All of the above.\*

# Chapter 10 - Alternatives and Precursors to Adjudication

## Key Words from Chapter

* Discovery
* Request for records
* Depositions
* Interrogatories
* Request for admission
* Pretrial conferences
* Administrative tribunals
* Legislative hearings
* Mediation
* Family group conferences
* Circle sentencing
* Problem-solving courts

## Teaching Strategies

This chapter includes 11 different precursors and alternatives to traditional court trials. When choosing which of these topics to emphasize in your classes and assignments, consider which ones are most pertinent to the students in your class:

* If your students are likely to assume the role of expert witness in civil law cases, they are more likely to be involved in depositions. If they are likely to play the role of a fact witness, then they are not likely to be involved in depositions. Similarly, depositions do not apply to family law, mental health, and criminal law cases.
* If your students work in the fields of addictions, domestic violence, or depression/suicide, then material on problem-solving courts may be of particular interest (though you should note that not many jurisdictions to not have problem-solving courts in one or more of these contexts).
* Mediation, pretrial settlement conferences, and other collaborative processes are being used more frequently in a variety of contexts, including professional discipline, civil lawsuits, and diversion from criminal court. Clinicians are more likely to play a direct role in mediation cases where they are one of the parties. Although a clinician could be brought into a mediation process, they are more likely to play the role of a support person for a client who is participating in mediation. Clinicians may be brought into family group conferences or circle processes as support persons or people who could provide services as part of the plan that emerges from the conference or circle.
* Clinicians may participate in legislative hearings as advocates for law reform for the benefit of their clients or professions. Although this book has focused on the role of clinicians as witnesses in court trials, legislative advocacy may be of interest to clinicians who want to pursue changes at a broader policy level.
* Clinicians working within government-regulated organizations (such as nursing homes, schools, and hospitals) may become involved in administrative hearings (to deal with complaints against the organization or particular practitioners).

At a minimum, you could define each of the pretrial processes and alternatives, giving examples of each to show how they may be used. For those processes or alternatives that you wish to emphasize, you could provide demonstrations, role-plays, or other experiential exercises (e.g., writing answers to interrogatories, or responding to a request for an admission).

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

1. *Oral Deposition* [pages 311-312]: This assignment works well for small groups. To illustrate how to critique the deposition, you could go through the first few lines with the whole class and then have students work on the rest of the transcript in small groups. [20-25 minutes]
2. *Admission* [page 312]: You could discuss this case in a large group or have students write a reflection paper on this topic. This question raises ethical issues related to professional competence, respect for the dignity and worth of all people, honesty, and cultural competence. Before answering the question, Regis should consult his attorney. Regis could also review his progress notes to see what he wrote in the client’s file. In addition, Regis could review his research on alcohol addiction treatment for Native Americans to determine if his statement is supported by the research. Regis wants to be honest, but he also wants to demonstrate that he is not biased or disrespectful. Should Regis simply answer yes, or should he provide a nuanced, detailed answer? What are the risks and benefits of each approach? Remember, this is an interrogatory, not oral testimony. [5 minutes for large-group discussion]
3. *Translated Sessions* [page 312]: In some ways, this question is similar to the one above on *Admissions.* If you did the prior case using large-group discussion, you could do this case using small-group discussion. Remember that during depositions, witnesses should answer questions concisely. They do not need to provide explanations, so a simple “Yes” may suffice and will not provide the opposing attorney with extra fodder for cross-examination at trial. Whereas the prior situation dealt with interrogatories, this case deals with a deposition. How does the type of discovery process (oral versus written) affect the way that the witness should respond? (for instance, with interrogatories, a witness has more time to provide answers and an opportunity to review a response with an attorney before submitting it). [10 minutes for small-group discussion]
4. *Conflict of Interest* [pages 312-313]:For this case, students should refer to their professional code of ethics for guidance on how to manage conflicts of interest and dual relationships. In general, clinicians should avoid dual relationships, particularly ones in which the clinician’s credibility and judgment could be questioned during cross-examination. Betty should be honest, disclosing her potential conflict of interest to the attorneys. She may also want to obtain her own independent legal advice or ethics consultation. She should withdraw from the case unless she can provide a strong ethical justification for continuing to act as the plaintiff’s expert. Students should note contextual factors that might affect Betty’s decision – for instance, if the parties live in a small, isolated community and Betty is the only person who can provide the desired expertise; or if all the parties agree to accept Betty as an impartial expert. Also, if Betty withdraws from the case, should she return any payments that she has received, or is she entitled to keep these fees? [5 minutes]
5. *Willful Exclusion* [page 313]: Students could analyze this case in small groups or as an individual homework assignment. Encourage students to consider the ethical principles of honesty, integrity, and full disclosure, as well as where their ethical commitments lie in relation to the clients or the attorney who contracts their services. Whose role is it to determine which psychological tests to use, and how? What was specified in the retainer agreement? Is failure to use a particular instrument tantamount to lying or fraud? What would a reasonable, prudent clinician do in similar circumstances? If you believe that the attorney’s request is unethical, should you also be concerned that the attorney may behave unethically with regards to other aspects of the case? [10 minutes]
6. *Professional Review Hearing* [page 313]: This case situation is quite complex, so it is probably best for you to facilitate a large-group discussion (rather than small groups of students working alone). For this exercise, you could provide students with access to review procedures for a relevant professional association or licensing body (e.g., APA, NASW, state licensing board). Help students understand how the review process deals with issues such as client confidentiality and the need for disclosure (providing evidence) within the review process. Note that when clinicians need to disclose information in a hearing, they have a right to defend themselves, but they should not disclose confidential information that is not necessary for resolution off the case. Note that similar issues may arise whether the case goes to mediation or to an adjudicative hearing. In either case, Zelda should consult with an attorney as soon as possible. The attorney may be prohibited from participating in the actual hearing or mediation, but the attorney may provide legal advice in advance of Zelda’s participation in either process. [10-15 minutes]
7. *Hoarding* [pages 313-314]: This exercise requires outside research, so you could assign it as a takehome assignment. Alternatively, you could provide students with a copy of relevant state laws, or access to a web link, and discuss the case in class. Discuss concepts of tort claims sovereign immunity, and qualified immunity, as well as the difference between cases involving negligence versus malicious intent. In particular, note that the legislation might protect Walter from being sued for negligence, but may not protect him from a lawsuit based on intentional wrongdoing or malicious intent. For an explanation of qualified immunity, see <http://www.law.cornell.edu/wex/qualified_immunity>, which quotes [*Pearson v. Callahan*](http://www.law.cornell.edu/supct/html/07-751.ZS.html#content) (07-751), “Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” See also, Richards, E. P. (2002). Legal liability of public health officials. *Encyclopedia of Public Health*. Retrieved from <http://www.encyclopedia.com/doc/1G2-3404000498.html> [10-15 minutes]

## Additional Discussion Questions and Exercises

1. *ADR:* Select a particular form of alternative dispute resolution, such as mediation, drug courts, community courts, family group conferencing, or circle sentencing. Conduct a literature review on this topic and write a paper that includes: a description of the ADR process, criteria that indicate this form of ADR may be appropriate, roles that clinicians from your professional background may play in this ADR process, and research on the effectiveness of this form of ADR.

This assignment requires research outside the class. You could assign different groups to focus on different forms of ADR and then have each report back to the class.

1. *Legislative Advocacy:* Identify a current legislative issue that is of concern to a person with your professional background (e.g., health care reform, mental health legislation, child protection regulations). Using the website of your state or federal government, determine when a legislative committee is receiving testimony regarding the issue (e.g., [*http://senate.gov*](http://senate.gov)or *http://house.gov*). Watch a segment of the legislative hearing on a C-SPAN cable television station or over the Internet (if the hearing is live-streamed). Take notes on the manner in which the witness provides testimony. Identify the strengths and limitations of the testimony, and provide suggestions on how the witness could have improved the effectiveness of the testimony.

You could identify a particular hearing and provide students with the time and location of the hearing. Alternatively, you could show a video of the hearing in class. Ideally, the witness is a professional from a similar background to the students. However, the exercise could be done with another type of professional as the witness. Encourage students to provide critique on factors such as: clarity, conciseness, credibility, reliability, impartiality, nonverbal language, and use of influential strategies such as metaphors, emotional appeals, and interesting language.

1. *Lost*: Assume Cassidy is being sued for malpractice and the opposing attorney issues a request for records. Unfortunately, Cassidy cannot find the records. Cassidy has honestly misplaced them. How should she respond to the attorney’s request for records? If she does not submit the client’s records, could she be charged with obstructing justice or contempt of court?

The simple response to this discussion question is to be honest and respond, “I have searched for the client’s records and I cannot find them.” Cassidy should consult an attorney for advice regarding how to respond. She might have a reasonable explanation for losing the records (e.g., they were destroyed in a fire, or they were destroyed intentionally because the agency destroys all records that are over two years old). Losing a client’s records will not help Cassidy’s defense in a malpractice lawsuit. She might want to settle the case outside of court. If Cassidy accidentally misplaced the records, she is not liable for obstructing justice or contempt of court. Also, this is not a criminal case and Cassidy has not violated any court orders. She could be subject to professional discipline for breaching her code of ethics.

## Reflection Questions in the Textbook

1. Donald receives a notice that he is to come to an attorney’s office to answer questions related to an upcoming hearing. This pretrial process is called:
   1. A deposition.\*
   2. Interrogatories.
   3. A request for records.
   4. A request to admit.
2. A family counselor is asked to sign a form stating that she shared confidential information with the client’s employer. This pretrial process is called:
   1. A deposition.
   2. Interrogatories.
   3. A request for records.
   4. A request to admit.\*
3. An art therapist receives a notice asking her to provide an attorney with copies of drawings by a particular client. This pretrial process is called:
   1. A deposition.
   2. Interrogatories.
   3. A request for records.\*
   4. A request to admit.
4. Irene is an expert witness who receives a list of questions that she is supposed to answer. This pretrial process is called.
   1. A deposition.
   2. Interrogatories.\*
   3. A request for records.
   4. A request to admit.
5. Which of the following is NOT a purpose of a pretrial settlement conference:
   1. To settle the case without a trial.
   2. To narrow the issues to be tried.
   3. To reduce time and costs for the parties and the court system.
   4. To punish parties for acting in an unreasonable manner.\*
6. Clients in a nursing home believe that the executive director of the program has misappropriated agency funds for her personal benefit. If the clients want to pursue a collaborative approach to resolving this dispute, they should:
   1. Press charges in criminal court.
   2. Sue the nursing home in civil court.
   3. Initiate mediation.\*
   4. File a formal grievance with the agency that regulates nursing homes.
7. When testifying at a legislative hearing, clinicians:
   1. Should never assume the role of an advocate.
   2. Should only assume the role of an advocate if hired and registered as a professional lobbyist.
   3. May act as an advocate, but should still try to convey objectivity and credibility.\*
   4. May act as an advocate, but should let the legislative body know that their testimony is biased and incredible.
8. When participating in mediation involving a conflict between two former clients, a clinician should:
   1. Disclose any confidential information that the clinician has about the clients.
   2. Meet separately with the mediator to share confidential information, rather than share it in front of the clients.
   3. Ask the mediator to leave the room, so the clinician can share the confidential information directly with the clients.
   4. Secure agreement concerning what confidential information can and cannot be shared by the clinician during mediation.\*
9. In a circle process, a clinician may provide:
   1. Only firsthand observations as evidence.
   2. Only firsthand observations and expert opinions as evidence.
   3. Firsthand observations, expert opinions, and secondhand information.\*
   4. Only secondhand (hearsay) information as evidence.
10. During an investigatory process, an administrative tribunal:
    1. Asks questions and hears information that may or may not be admissible in a court of law.\*
    2. Uses strict rules of evidence to try the case, similar to those used in a public court hearing.
    3. Acts as a passive judge.
    4. Acts as an expert witness.

# Chapter 11 - Conclusion

## Key Words from Chapter

* Prepare
* Be honest
* Interprofessional collaboration
* Therapeutic jurisprudence

## Teaching Strategies

One way to conclude your course is to invite students to vote on topics or exercises for the final class. There may have been some exercises or topics from earlier in the course that they would like to cover in greater detail, or there may be some topics that go beyond what you had originally planned for the course.

Provide students with strategies for continuing their education and training as potential participants in legal processes. Identify local, state, or national associations that provide relevant training and conferences. Note that some students may want to pursue law school. Also, note how students may be able to enhance their capacity to act as expert witnesses (e.g., through post-graduate education, supervised internships, and work at agencies specializing in forensic practice).

Conducting a mock trial in the final class is also a nice way to pull together learning from the entire course in an interesting, experiential manner.

## Sample PowerPoint Slides

Please see separate file for sample PowerPoint Slides for this chapter.

## Reflection Questions in the Textbook

This chapter did not contain reflection questions.

## Additional Discussion Questions and Exercises

You may use the following questions for in-class discussion or for a journaling exercise. Some questions help students reinforce their learning. Others help them identify areas for continued learning and professional development. Student answers may also help you identify strengths and areas for improvement in your course. As a final classroom exercise, you could ask students to write answers to the questions and then ask students to share their answers with the class.

1. Identify three specific skills or strategies that you learned this term that are key to helping you be an effective witness?
2. Identify three specific skills or strategies that you would like to improve upon in order to become more effective as a witness?
3. What information from “Clinicians in Court” surprised you the most?
4. Identify four self-messages that you think will be useful when preparing yourself for participation in a trial?
5. Identify two or three challenges that you think you may have when trying to work together with an attorney.
6. What was the most useful piece of information that you learned from this course?
7. What additional information or skills would you have liked to receive from this course?

## Test Questions

1. Clinicians such as drug court counselors and supervised access practitioners:
   1. Have no standards of practice.
   2. Have highly developed, time-tested and true standards of practice.
   3. Have some standards of practice, although these are in early stages of development.\*
   4. Do not need any standards of practice because they are not subject to legal accountability or professional review.
2. Interprofessional collaboration between attorneys and clinicians may be fostered through:
   1. Joint degree programs.
   2. Interprofessional associations.
   3. Joint field education.
   4. All of the above.\*
3. Scientific standards such as reliability and validity are:
   1. Different from the legal standards of credibility and admissibility.\*
   2. The same as the legal standards of credibility and admissibility.
   3. Unrelated to the legal standards of credibility and burden of proof
   4. Not admissible as evidence in a court of law.
4. Therapeutic jurisprudence refers to:
   1. Providing therapy to judges with psychiatric disorders.
   2. An approach to legal systems and processes that promotes positive effects on the behavior, emotions, social welfare, and mental health of the parties.\*
   3. An approach to mental health systems and processes that promotes positive effects on the legal rights and entitlements of people with mental disorders.
   4. Teaching attorneys to use psychotherapy with their clients rather than trial advocacy and adversarial negotiations.
5. When a treating clinician takes on the role of a forensic expert, the clinician may be engaging in a:
   1. Dual relationship.\*
   2. Qualified immunity.
   3. Burden of proof.
   4. Statutory privilege for work product.
6. Within the traditional court process and legal system, attorneys and judges:
   1. Share control with mental health professionals on an equal basis.
   2. Allow mental health professionals to take primary responsibility for administration of the justice system.
   3. Take charge of how cases are processed.\*
   4. All of the above.
7. Separate professional training, education , and practice tends to spawn:
   1. Respect and cooperation between attorneys and clinicians.
   2. Ignorance and stereotypes between attorneys and clinicians.\*
   3. Mental health interventions that are highly integrated with criminal justice interventions.
   4. Mental health interventions that are highly integrated with family and child welfare laws.
8. In terms of forensic research, the validity of eyewitness testimony has received:
   1. No attention.
   2. Very little attention.
   3. Considerable attention.\*
   4. Only inappropriate attention.
9. In terms of forensic research, the effectiveness of treating clinicians as witnesses has received:
   1. Little attention.\*
   2. Lots of positive attention.
   3. Lots of negative attention.
   4. A large mix of positive and negative attention.
10. Courts have traditionally focused on:
    1. Negative attributes such as fault, crime, abuse, neglect, and wrongdoing.\*
    2. Positive attributes such as strengths, resources, and potential growth.
    3. Fabricated attributes such as masks, lies, and exaggerations.
    4. Aesthetic attributes such as beauty, symmetry, aura, glow, and artistic impression.

1. You may be able to provide similar information to the guest speakers. Still having guest speakers helps provide students with information from different perspectives. [↑](#footnote-ref-1)
2. You may be able to provide similar information to the guest speakers. Still having guest speakers helps provide students with information from different perspectives. [↑](#footnote-ref-2)
3. The country and ethnic group for this assignment are fictional. If you want to use the names of a real country and an oppressed ethnic group, feel free to do so. [↑](#footnote-ref-3)
4. The names and citations in this report are fictional. [↑](#footnote-ref-4)
5. This sample is based on fictional case facts, state laws, and research. Different jurisdictions may have different requirements for adoption reports. Parts of this report have been abbreviated, as the extent of details normally required for an adoption home study go beyond what is relevant for demonstration purposes. Additional topics normally included in an adoption report are: legal (including criminal and child abuse background checks), health, education, recreation, attitudes toward adoption, and religion/spirituality. For additional information on the contents and format of an adoption home study report, see Child Welfare Information Gateway (2010). [↑](#footnote-ref-5)