

March 2016

PSYCHOTHERAPY IN A COURT SETTING:

The Dilemmas of Therapy in a Mandated Process

By Dr. Monty Weinstein,

Licensed Marriage and Family therapist, Nationally Certified Psychologist, Licensed Psychotherapist, Lifetime Fellow of the American Psychotherapy Association, Fellow of the American Ortho-Psychiatric Association

Assisted by Vickie Taylor, Administrator for Dr. Weinstein and research editor of the Family Therapy Center, Inc.,

ABSTRACT:

This article is about the difficulties in overcoming mandated reporting. When patients are in a mandated, therapeutic relationship, the fear exists that third parties will be evaluating them, predicated on what they reveal to the therapist. Instead of breaking down defense mechanisms during the fragile therapeutic process, there is in return severe repression in many instances between the therapist and the patient. Also of extreme concern, the therapist then develops a dual relationship. He or she is no longer acting as the therapist with the patient, but rather takes on the role of an evaluator. In a psychological process, an evaluator cannot have the role of the therapist because the therapist must have a therapeutic alliance with the patient. A conflict surfaces when the therapist must take on the dual role of the evaluator who then makes heavily relied-upon recommendations to the judge regarding when and if the patient can move forward.

PSYCHOTHERAPY IN A COURT SETTING:

The Dilemmas of Therapy in a Mandated Process

Psychotherapy is a very important therapeutic alliance between the patient and the therapist. It is protected by certain laws such as HIPPA and Forensic Guidelines which protect privilege and confidentiality. A therapist's relationship with his/her patients is of the utmost importance, and it is similar to a relationship that a priest or other theologian has with his congregants. The window of psychotherapy to me is a holy ritual where the patient can divulge as many things as he/she feels are important. If too many people get a glimpse in the window, then the rapport between the therapist and the patient is diminished. Furthermore, one of the most important attributes to the patient is the fact that the only place that the patient can have a mental catharsis is in the office of the therapist.

Therapeutic training is also an extremely important factor because the process of transference and counter transference and all of the variables involved in this process are of extreme importance to both the therapist and the patient. Therefore, when a therapist moves from the therapeutic setting to the court room or forensic setting, extremely important issues must be addressed:

- One of the first issues is the problem of divided loyalty and accountability. If a therapist is accountable to judges, lawyers and administrators in various courtroom settings, then in order to make a living and in order to get referrals, in my opinion, the therapeutic work is diminished.

- There is no way to avoid the therapist/ expert witness, being forced to undermine his/her values because the therapist is now accountable to a third party in order for the therapist to survive in his/her career. This factor plays a devastating role in the therapeutic process between the therapist and his/her patient. It produces an aura of fear with the patient. In order for the therapeutic process to take place, the patient must encounter a break-down of defense mechanisms. This breakdown of defenses cannot happen if in fact the patient is cognizant that the therapist will be reporting his/her findings to a judge or courtroom administrator. At that point, privileged information and confidentiality are totally diminished in my opinion.

This lays the foundation to the various flaws in mandated therapy. In my opinion, mandated therapy is an unethical process. There is no way that a patient can feel comfortable and free in therapy with the knowledge that a third party outside of the therapist may be evaluating him or her as a patient. The patient cannot have confidence to fully disclose and be honest in the knowledge that he/she will simply be accepted despite his/her fears, obsessions, anxieties. For Example: Why would someone who was involved in a contentious court battle over custody of his/her children reveal all of his or her inner demons if in fact these obsessions may become the very core of the official assessment which may prohibit him/ her from having a further relationship with the children?

This puts not only the patient but also the therapist in a very precarious situation. In reality, if everything depends upon what the therapist says to a third party, hypothetically, then not only would there be repressed dialogue, which will hinder the therapeutic process, but the therapist is then placed in the situation of being in a dual relationship, of playing the role as the therapist

who is trying to build an alliance with the patient, and at the same time playing the role of the evaluator making recommendations to the Court.

For numerous years I have worked as an expert throughout the Family Courts of the United States, Canada, Germany, even Israel. I have testified in approximately all of the States of the Union. One problem that I have encountered repeatedly is that Judges asked and expected that I enter the case not only as an expert witness on behalf of one of the parties, but also that I engage in therapeutic intervention with the individual on the adversarial side. It was not difficult to anticipate that more often than not, in those instances, the adversarial side became hostile and did not want any therapeutic assistance from me because I did not have any form of therapeutic alliance with them, but rather their opposing side. In those cases after failed therapeutic attempts with the adversarial side, I was forced to resign from the case entirely. In my earlier days, these situations created chaos and havoc, and as one can understand, I did not ingratiate myself with the judges. During one particular case, which must remain anonymous, I was the court-appointed evaluator for both parties of the case. The judge asked me to undergo therapy with one of the parties because that particular party was perceived by the Court to be “acting out,” and for whatever reason, the Judge felt that I should share in the responsibility of assisting this client/patient in controlling his behavior. Ultimately I had to leave the case. My role became dual as therapist and evaluator, and this rarely ends well for the parties in high conflict matters.

Furthermore in another major case, I was the therapist for a law secretary of a chief matrimonial judge. At one point during the therapeutic process, the law secretary lost all composure and physically attacked one of the other court secretaries. I was ordered to turn over the records of my therapeutic encounters with this patient. I refused. At that point, I was held in Contempt of Court, the Court held a contempt hearing against me, and I won because the Judge agreed with

me on the premise that no one would ever disclose his/her inner fears and anxieties to a therapist who was forced or coerced to report said therapy to the court.

It is becoming more and more apparent that any therapist involved in delicate court room situations where the outcome is whoever wins the legal battle gets the children, is under severe pressure to continue working in that role. Many therapists, unfortunately, are forced at the sake of their career, to undermine their own personal values and the values of the guidelines from various mental health bodies which are supposed to aid them in navigating through these difficult processes.