



Another Nice Mess You've Gotten Me Into

How Expert Witnesses Degrade Your Case through Good Intentions

A White Paper from The Colorado Center for Clinical Excellence

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March 4, 2016

Jorge Delgado, a 27-year-old man, was in a terrible accident two years ago. He was driving his wife and infant daughter home from a family gathering. It was 10:30 at night, and a drunk driver hit his car, breaking both of his legs, fracturing several vertebrae, and giving him a concussion. He spent two weeks in a hospital and then had a year of physical therapy afterward. His wife and daughter also were injured in the crash, but were treated and released the night of the accident.

Jorge is now suing the drunk driver, claiming his physical injuries keep him from being able to work. He also alleges the accident caused him to develop Posttraumatic Stress Disorder (PTSD), which he says is the proximate cause of him losing his job, his impending divorce, and his "loss of the life I used to enjoy."

Jorge's attorney is looking to hire a number of experts for the case. In addition to medical doctors and economists, she wants a forensic psychologist to evaluate Jorge to help her convince a jury that (1) his PTSD stems from the car crash; and (2) the resulting mental illness caused his job loss, his divorce, and his significant emotional distress.

Enter Dr. X.

Let's assume, for the sake of this discussion, that Dr. X knows what he is doing. He is a well-trained forensic psychologist with a good reputation for conducting thorough evaluations and providing objective opinions that do not overstep the bounds of the data he collects. Other good experts disagree with his conclusions at times, but no one doubts his credentials.



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Let's also assume the following information about Jorge, which Dr. X will discover during the course of his evaluation (and which the defense attorney wants to highlight as more plausible explanations for his job loss, his divorce, and his significant emotional distress):

1. Jorge has a history of anxiety and depression dating back to high school.
2. He has a history of marital problems (at the time of the accident, he had been married for two years).
3. He started drinking heavily shortly after being released from the hospital.
4. He became very angry after the accident and got into several physical altercations at work and with family members.

After evaluating Jorge, Dr. X's opinion is that the car accident did cause Jorge's PTSD and was the major reason for his job loss, his divorce, and his emotional distress. But, he also knows that some of the data does not look so good for Jorge. So what can Dr. X, a *good* forensic psychologist, do to help Jorge's attorney?

Clarify the questions. An easy trap into which many forensic psychologists fall is to assume they know what questions an attorney wants answered. This can lead to irrelevant evaluations, which are a waste of time and money. It can also lead an expert to stretch the data. For example, if Dr. X did not examine Jorge for PTSD, he might be tempted to tell Jorge's attorney the data still supports that diagnosis if she asks him afterward. He would then get clobbered by opposing counsel, and rightly so, because he conducted an inadequate evaluation. Good intentions on Dr. X's part, but disastrous for what could otherwise be a strong case.

Conduct a good evaluation. This may seem obvious, but to many forensic experts, it is not. Dr. X can help Jorge's attorney by conducting a *good* evaluation. That means it must be thorough. Dr. X must understand the statutory and case law surrounding the case, along with relevant research. He must meet with Jorge to complete a clinical interview and psychological testing (psych testing increases the validity and reliability of diagnosis, prognosis, etiology, and recommendations). He must look for evidence that is favorable to Jorge. More importantly, he also must look for evidence that is *unfavorable*. Many experts stop when they find evidence that proves what the hiring attorney wants to hear--they miss many important contradictory details, which then come as a surprise to them on cross-examination or in deposition. Experts want to help the attorneys who hire them (we all want to please others, and we certainly want to get hired again), but experts who ignore data that would come out in a thorough evaluation do the hiring attorneys no favors. In this case, Dr. X has conducted a thorough evaluation and found the four above-mentioned potential alternative explanations for Jorge's current predicament.



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Tell the truth, the whole truth, and nothing but the truth. After completing a good evaluation, Dr. X can help Jorge's attorney by giving her his opinions on the case. He must tell what he considers to be the objective truth and he should share the positive information along with the negative. It can be tempting to downplay or hide contradictory data, but a good opposing attorney will find it and exploit it (even bad attorneys can do this--it's pretty easy). It also can be tempting for the expert to push an opinion that the expert thinks the attorney wants to hear--that is a good way to make an attorney happy for a few minutes but to destroy what otherwise could have been a strong case in the long-run. Dr. X shares the data that might point away from PTSD being the proximate cause for Jorge's distress with Jorge's attorney and explains to her why the vast majority of the evidence says otherwise.

Although "Jorge" is not a real client, his story is representative of most legal cases--there is almost always some evidence that points one way and other evidence that points in the opposite direction. Good forensic experts collect *all* of the data--the good, the bad, and the ugly. Like Dr. X, good forensic experts consider all aspects of the case and form opinions based on weighing all the evidence. They also share all of this evidence with the attorney who hires him. This helps good forensic experts form more valid and reliable opinions, because they have considered all angles, and it help them anticipate cross examination questions where opposing counsel is sure to highlight every piece of contradictory evidence.

The pull to tell attorneys what experts think they want to hear is strong. Really strong. But it is counterproductive and unethical, and it can end up harming the case in the long-run. In an attempt to be *nice*, the inexperienced or imprecise forensic expert can create a *nice mess* for an attorney.

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