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Three Kinds of Liars

History of the Forensic Psychology Industry

When there is no evidence of validity of psychiatric evaluation regarding a particular legal question, it should not be assumed that the evaluations can be made accurately. Rather, when evidence is lacking, the assumption should be that psychiatrists cannot make such evaluations accurately, especially in view of the general findings that validity of diagnosis is usually very low wherever it has been tested.

Jay Ziskin,
Coping with Psychiatric and Psychological Testimony, 1995

MENTAL AND EMOTIONAL DISTRESS

[Richie] Parker, 19, drew national attention after pleading guilty on January 13, 1995, to felony first-degree sexual abuse in a case in which he was charged with forcing a 14-year-old freshman girl to perform a sexual act on him in a stairwell of Manhattan Center High School. Parker received five years probation. . . . Parker is undergoing treatment and counseling for sexual abuse.

He settled an \$11 million civil suit with the victim last June 15. . . . Parker's victim said she suffered "severe and serious physical and psychological injuries including sexual assault, fear of contracting AIDS, and Post-Traumatic Stress" as a result of the attack. (Reid, Orange County [Calif.] Register, March 26, 1996)

The tort business is a billion-dollar industry in America. By 1980, some five million lawsuits were being filed annually in the United States. Whether that number has increased, decreased, or stayed the same is a matter of some contention, but whatever the actual numbers it is clear that psychology has played a huge role in expanding both the variety of possible claims and the size of possible awards.

The American system of justice, of course, has long recognized intangible damage like mental and emotional distress in personal injury cases, and American juries have a long history of adding emotional damages onto the damages incurred to one's income by, for example, defamation of character or invasion of privacy. So in most standard tort cases today, claims for mental or emotional distress or psychic damage that causes loss of the enjoyment of life's activities are now routinely tacked onto claims of personal injury resulting from any of the innumerable accidents and incidents for which the blame can be laid at someone's door.

Psychology's contribution is to add several hundred new "injuries" that can mean either the loss of much of the enjoyment of life or even the loss of one's mental health.

Damages for the loss of enjoyment of normal life activities are called "hedonic" damages. According to Walter Olson in *The Litigation Explosion*, "total estimates of hedonic damages have ranged from \$450,000 to \$13,400,000 in 1989 dollars" (Olson 1991, p. 171). That is a lot of money just because you are not having any fun anymore, but it is nothing compared to what you will get if your mental health itself is directly damaged.

An early California case involved a suit by a woman who was involved in a trolley car accident. As a result of that accident, the plaintiff alleged that she engaged in over 100 illicit sexual experiences. The California jury awarded her \$50,000 for the mental distress associated with her trauma. (Gordon 1976a, p. 3)

Today, according to Jury Verdict Research, Inc., damage to your mental health is worth one hundred times what loss of ability to satisfy your hedonic desires pays.

In the United States, in the mid-1970s, there was just one million-dollar personal injury award per week, on the average. In 1990,

there were 735 million-dollar personal injury verdicts awarded, and 750 million-dollar verdicts were awarded in 1991. Nearly every one of those verdicts included a component for psychic injury, for damages for noneconomic injuries.

And just who do you think is going to make the claim for you that you do indeed suffer from a psychological injury worth \$11 million in compensation? The professional forensic clinician, of course. Who else?

In cases of personal injury, the psychologist can explain to the court and the jury the personality changes that the allegedly injured individual has undergone as a result of the injury, the problems the injury has created in his family life, and how such injury affects his vocational adjustment in the future. (Gordon 1976a, p. 3)

You might take the stand and claim that since you were struck by the falling ladder, you are unable to work or to sleep and you have shattering nightmares in which you relive the trauma of the injury and envision your three children naked, hungry, and shivering, begging on the street with bowls, but this is going to sound a whole lot more convincing if Dr. V.I.P. Harvard tells the court that in his professional opinion, you suffer from the serious disorder of post traumatic stress syndrome.

Many experts will go even further, particularly in claims of post traumatic stress disorder, and not only will diagnose you but will pinpoint for the judge or the jury the actual cause or agent of the trauma that you claim to have suffered—e.g., the dangerous falling ladder. Only another expensive psychoexpert could argue that your expert is wrong.

It is clear that what used to be the well-guarded province of the prosecutor or judge or jury—the determination of what wrong was done, who is responsible for that wrong, and what the compensation should be—are now all decisions that belong, in fact if not in law, in the realm of the professional psychologist. Professional psychologists have claimed a unique competence to assess such mental damages, and the public believes their claim.

How did we get to such a state of affairs? How did we come to