



Diagnostic Reification in Court

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Good psychologists think in shades of gray. But the inside of a courtroom is painted black and white. One side wins, the other loses. Here, I discuss an ethical dilemma posed by this disjuncture between scientific uncertainty and the law's pull for absolutes. This dilemma concerns diagnostic labeling in court.

Three separate trends are pushing this issue to the forefront. The first is the reification of the DSM as scientific truth. Increasingly, mental health experts feel compelled to invoke the Diagnostic and Statistical Manual of Mental Disorders in forensic reports and testimony in order to legitimize their opinions on everything from civil commitment and criminal responsibility to civil damages and parental termination. The legal implications of diagnostic labeling are profound. "Paraphilia NOS" can mean lifelong hospitalization; "schizophrenia" can separate a parent from her child; "Antisocial Personality Disorder" can demonize a person in the minds of jurors, and "posttraumatic stress disorder" can either excuse criminal conduct or, conversely, win monetary awards.

Parallel to this reification is a second and more alarming trend, the use of diagnoses in an arbitrary and pretextual manner in order to obtain specific legal outcomes. Recent statutes and case law – especially in the area of sexually violent predators – pull strongly for such practices, by requiring a diagnostic label as a predicate for civil commitment of dangerous individuals.


In contradistinction to these two trends is a third trend of growing awareness among both mental health professionals and the public of serious flaws in the DSM diagnostic system. An emergent body of critical scholarship exposes the manual's underlying biases, and the poor validity of many diagnoses. DSM labels, we are learning, have been created, modified, and deleted with little empirical rationale, often due to partisan influence and the privileging of biologically based theories. Indeed, given the state of uncertainty regarding the scientific reliability and validity of many conditions catalogued in the manual, DSM diagnoses are more properly regarded as scientific hypotheses awaiting empirical verification rather than established facts.

The convergence of these trends in the black-and-white arena of the courtroom presents an ethical quagmire. Even as they become disillusioned with the scientific underpinnings of the DSM, psychologists are increasingly pressured to establish their professional legitimacy through referencing "the bible" in reports and testimony.

The APA Ethics Code and the *Specialty Guidelines for Forensic Psychologists* both contain language pertinent to this ethical dilemma. The Ethics Code's aspirational principles highlight our duty to act with integrity and honesty. We are cautioned to avoid misrepresentation and subterfuge and be vigilant against "factors that might lead to misuse of [our] influence." "Psychologists take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices," asserts Principle D.

The enforceable standards of the Ethics Code provide additional guidance, requiring a sufficient scientific and factual basis for professional judgments (Section 2.04) and diagnoses (Section 9.01). These duties are echoed by the Forensic Specialty Guidelines, which instruct psychologists to "make known the limitations" of "novel or emerging principles and methods" in forensic opinions and testimony (Section 4.05).

What does this guidance mean, in practice? At minimum, psychologists should be aware of the raging controversies over certain DSM diagnoses and should be transparent in informing the court of the limitations of scientific certainty. More controversially, perhaps, psychologists may want to reconsider the automatic assignment of DSM labels. For example, an insanity report can discuss an individual's state of mind and psychiatric symptoms at the time of an offense without ever referencing the DSM. Even more controversial is the question of whether we have an ethical obligation to take action when we see other psychologists engaging in pretextual or biased use of DSM labeling in court.

Like the moon's powerful pull on ocean tides, the legal arena exerts a force that is hard to resist. Psychologists are pulled to affiliate and be of service, especially if we are convinced of the moral or scientific correctness of our opinion. We are pulled to abandon nuances and opine with a level of certainty beyond what the science supports. This is a pull that we are ethically obligated to resist. 

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