

A TEACHING RESOURCE FOR PSYCHIATRY RESIDENTS

VIEW FROM THE JURY BOX:

Clark v. Stover

A Psychiatric Malpractice Mock Trial

MOCK TRIAL COMMENTARY

DIRECT AND CROSS-EXAMINATION OF THE PLAINTIFF

In a civil suit, each party may call the other to testify (unlike in a criminal matter, where defendant has the right to remain silent).

Plaintiff here testified about the lack of follow-up, AA, and IOP appointments. She also helped establish non-economic damages. Dr. Stover sending bill for services and the judge handing Mrs. Clark a tissue typically would not play well for the Defense with the jury.

The Defense continued to build on suicide protective factors – Mr. Clark evidenced no psychosis, had a history of going to IOP, a strong family bond, and no suicidal ideation. The Defense elicited helpful testimony in Mrs. Clark’s inconsistent deposition testimony regarding the gun and the fact that important collateral information regarding Mr. Clark’s plan to stop taking medication and to stop treatment was not communicated to Dr. Stover.

With regard to trial procedure, the Defense objected to the graphic, post-suicide picture of Mr. Clark on the grounds that the picture was not probative. In other words, it does not help clarify whether Dr. Stover met the standard of care or not.

We also saw re-direct examination. Re-direct examination is done to continue a line of questioning of a witness raised in prior questioning (cross examination). For example, Plaintiff could ask about a topic on direct examination then wish to follow-up on the topic after cross-examination. Plaintiff would then conduct re-direct examination. The questions would be limited to items testified to during cross-examination. The Defense could then conduct re-cross examination, limited to items testified to during re-direct. Exceeding the scope of the prior testimony is objectionable. This way, the topics testified to become increasingly narrow.

A witness typically is not allowed to testify what others think or feel when that other witness is available to testify. Mrs. Clark, however, testified as to how her children thought and felt about their father’s death without any objection from the Defense. This was probably a wise strategic choice. Had the Defense objected, the children would have called as witnesses and likely delivered the same testimony while eliciting sympathy from the jury. Plus, Defense would have had to cross examine the children, which often doesn’t play well to the jury.

