

Ethics of the Expert

An important aspect of performing as a forensic psychologist and especially as an expert witness is adhering to a set of professional guidelines or ethical principles. It is especially important for psychologists in their roles as forensic experts to perform in an ethical manner for many reasons, which we have already touched on in this book. Factors such as the adversarial nature of the legal system, the significant consequences of legal decisions, and the public nature of forensic work all converge to make ethical practice as an expert witness especially important. The legal system sometimes conflicts with the practice of psychology and even the ethical principles of psychologist as objective practitioners of science. The ethical ideal of the adversarial legal system is to fight for a client to the best of your ability. In essence, you are not supposed to be objective; you are supposed to be an advocate. As a result, it is even more important that a forensic psychologist maintains a firm ethical foundation in the face of pressure from the legal system. Forensic psychologists assist the legal system with decisions that have far-reaching implications. It is important not only to be correct when testifying on the potential for violence for someone facing the death penalty but to do so in an ethical manner. Also, as discussed in Chapter 1, the public often forms their view of psychology from the media (Stanovich, 2004). The more sensational media images are very likely to come from forensic psychology (Huss & Skovran, 2008). As a result, forensic psychologists have a special duty to behave in an ethical manner because the public forms much of its view of psychology from these media images.

Many professions have a set of ethical principles or ethical guidelines that individuals in that profession follow and psychology is no different. In fact, there are several potential sources of professional and ethical guidelines for forensic psychologists. The primary source of ethical principles for psychologists is the **American Psychological Association's Ethical Principles of Psychologists and Code of Conduct** (APA, 2002). But why have these ethical codes? Hess (1999) suggests that because society grants a particular profession a monopoly, the profession must take it upon itself to serve the public's best interests and not simply serve the profession. Ethical codes serve these interests. Frankel (1989) identifies several functions for ethical codes that largely focus on the need to educate the public, instill trust in a profession, identify a shared set of values and skills for members of a profession that can serve as a professional compass, and provide a mechanism for sanctions against unethical professionals as well as a mechanism for protecting professionals from unwarranted claims by clients.

Competence

The most obvious area of ethical concern in forensic expert testimony is the need to be competent (Sales & Shuman, 1993). The APA Code (APA, 2002) explicitly states that psychologists should only practice "with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study or professional experience" (p. 1063). In other words, psychologists must stay within their **scope of practice**. Their competency comes from having sufficient education and experience in a given area to make reliable and valid professional conclusions. For example, a forensic psychologist is competent to practice forensic psychology but is not competent to practice law unless he or she actually has a law degree and has obtained additional professional experience to practice law. That is not to say that a forensic psychologist does not need to be familiar with the law governing the practice of forensic psychology (Shapiro, 2002), but that the expert must simply avoid practicing as a lawyer instead of a psychologist. Furthermore, **someone might be trained as a forensic psychologist but that does not give her the requisite experience to practice all aspects of forensic psychology. Someone who is only**

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trained to diagnose adult psychopathology would not be competent to perform child custody evaluations. She needs to be familiar with mental illness but also with developmental psychology and the literature on parenting to adequately assess someone in a child custody situation. A psychologist may even be competent to practice in a given area but not competent to use a particular psychological test (Rotgers & Barrett, 1996). A forensic psychologist may attempt to assess someone for depression in a personal injury case but not be competent to use the MCMI-III because he was never trained to do so in graduate school, was never supervised in practice, and never attended any professional workshops on this psychological test (Knapp & VandeCreek, 2001).

Furthermore, psychologists have an ethical obligation not only to be competent but to maintain their competence and expertise by participating in opportunities for continuing education. They need to keep up on developments for any method or test they seek to use (Shapiro, 2002). Scope of practice is not only relevant to individuals practicing within forensic psychology or particular areas of forensic psychology. It is also relevant to the profession as a whole. For example, in Chapter 12 we will discuss not only the relevant legal considerations and psychological techniques involved in child custody decisions but also whether those techniques meet a threshold requirement and are sufficient enough to actually inform the courts. Have we demonstrated adequate reliability and validity to perform child custody evaluations? If not, psychology as whole is practicing outside of its scope of practice. This notion may seem rather simplistic at this point, but we will continually discuss instances in which it could be questioned whether forensic psychologists are practicing within their scope of practice. Of course, a forensic psychologist cannot be expected to have a complete grasp of every topic that comes up in a given case or with a particular person. Competence does not mean knowing everything. As a result, it is a very good idea for forensic psychologists to seek out consultation with other experts when they are unsure about ethical or factual issues that confront them in order to be competent (Dvoskin & Guy, 2008). Consultation may consist of making a phone call to a respected colleague to talk over a particular issue or even paying another expert in a particular area for his or her time to discuss a case or review your report. I routinely consult with a colleague from graduate school when I question findings in an assessment and he in return consults with me. I believe the process makes us both more competent.

Informed Consent and Confidentiality

Two other related ethical issues are the requirement for obtaining informed consent and confidentiality. It is routine in the practice of clinical psychology that we obtain the consent of a client to undergo an evaluation or participate in treatment (Stanley & Galiotta, 2006). Informed consent consists of describing the procedures and the process as it is likely to happen and obtaining the client's legal consent to proceed. Obtaining informed consent is also necessary in a forensic context and the APA code of ethics even makes special mention of obtaining informed consent when services are court ordered in 3.10c of the Ethics Code (APA, 2002). In a forensic context, a person may be experiencing additional coercion either because of his or her own secondary gain or because a legal authority is mandating the evaluation.

Related to obtaining informed consent is the idea of confidentiality. As most people assume, there is both statutory and case law upholding the confidentiality of the therapist– client relationship (Glossoff, Herlihy, & Spence, 2000). Although this privilege does have some limitations depending on the jurisdiction (e.g., reporting child abuse), clients may assume that this privilege exists universally. A problem arises if patients assume this same privilege exists

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in a forensic assessment where confidentiality is then further reduced (Knapp & VandeCreek, 2001). If the court mandates a report or an attorney requests an evaluation of a defendant in a criminal case, the report could be read by the judge and the opposing attorneys, and potentially introduced into evidence in open court where the forensic psychologists will testify about it. This practice does not allow for the same level of confidentiality one normally experiences when seeking therapy.

A problem arises if a forensic psychologist does not explain this limitation to an individual or the individual does not understand this limitation (Hess, 1999). It is important that an examinee recognizes the limits of confidentiality in a given case and that he clearly understands prior to beginning the process. It becomes further complicated because explaining these limitations conflicts with the forensic psychologist obtaining information in an open and honest manner. If a client misunderstands and believes that everything she discusses is confidential, she will be more likely to reveal information that is harmful to her legally, but may be useful for the evaluation. There is a conflict for the forensic psychologist. On one hand he has an ethical obligation to obtain truly informed consent, but on the other hand the assessment will be more accurate if the information he obtains from the parties involved is believed to be confidential. Nonetheless, the ethical responsibility for informed consent is more important.

In one instance I was explaining the limits of confidentiality to an examinee. The examinee said he understood but that his admissions did not matter because his attorney had told him unfavorable information would be removed from the report if the attorney wished. I was not sure whether the attorney actually told the client that, but I made it even clearer that this was not the case and that anything he said to me could have significant implications for his case and the potential outcome.

Financial Arrangements

Another potential ethical issue that experts confront are the financial issues related to being a forensic expert. These issues are increasingly important as forensic psychology is seen as a financially rewarding area of practice. This area seems a rather mundane one for a potential ethical conflict to occur but it is actually of great concern. The APA Ethical Code (APA, 2002) encourages establishment of financial arrangements as early as possible in the relationship and an expert may even require payment in advance and be very specific about the services being charged for and the specific fees (Knapp & VandeCreek, 2001).

Perhaps the most salient reason for handling financial matters in this manner is the potential impact of any compensation on the forensic conclusion. Psychologists should not perform forensic services on a **contingency fee** basis where the psychologist is paid for his or her services based on the conclusion (Knapp & VandeCreek, 2006). Such a practice has serious complications for the objectivity of the forensic process. Obvious examples of a contingency fee arrangement are normally easily identifiable but more subtle situations such as an attorney refusing to pay unless a report is “slightly” altered are potentially more dangerous.

Multiple Relationships

The APA Ethics Code (APA, 2002) states that psychologists should avoid multiple relationships “if the multiple relationship could reasonably be expected to impair the psychologist’s objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists” (p. 1065). Typically, the focus of multiple relationships as an

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expert focuses on the conflict between being a treating therapist and a forensic evaluator (Shuman, Greenberg, Heilbrun, & Foote, 1998). There may be situations in which these relationships cannot reasonably be avoided; such as if a psychologist is the only mental health professional in a rural area or a psychologist requires information on a patient who has been court-ordered into treatment (Knapp & VandeCreek, 2006). The forensic psychologist needs to be aware of the potential harm that can result in these situations.

There are a number of potential ethical problems that can arise from circumstances in which a multiple relationship exists: For example, being asked to evaluate someone in a child custody dispute to whom you have previously delivered psychotherapy (Shapiro, 2002). The difficulty arises because the focus in a forensic context is no longer the welfare of your client but your obligation to the attorney or court that has hired the forensic psychologist. The focus is on giving them objective information (Knapp & VandeCreek, 2006). Suppose a psychologist is treating a woman who is suffering from anxiety and then is asked to perform a custody evaluation to help the court decide the custody of her two children. The psychologist is placed in a potentially compromising situation no matter the conclusion. If the opinion is unfavorable, the finding is very likely to impact the therapeutic relationship in the future and decrease the chances of a successful process because the therapeutic relationship has been damaged. If the conclusion is neutral, the psychologist might be pressured to provide a more favorable conclusion by a client. If the conclusion is positive, there will be an appearance of favoritism. Moreover, a psychologist can never be sure whether his report simply verified his previous therapeutic assumptions or is really objective and truly answers the court's question. As Shapiro (2002) notes, "one cannot be an effective therapist in terms of assisting a client or patient to deal with her or his difficulties if one has been involved in doing a comprehensive forensic evaluation of that individual" (p. 46).