

## AAPL: Ask the Experts-2016

Neil S. Kaye, MD, DFAPA  
Graham Glancy,

Neil S. Kaye, MD, DFAPA and Graham Glancy, MB, ChB, FRC Psych, FRCP (C), will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send question to [nskaye@aol.com](mailto:nskaye@aol.com).

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Q.: What is the role of advocacy?

A. Kaye:

Advocacy is an important part of the role of the forensic psychiatrist. However, one must be aware of the AAPL Ethics Guidelines that insist on striving for objectivity and impartiality in reaching an opinion. Many AAPL members thus are uncomfortable being placed in an advocacy position.

However, the SCOTUS in *Ake v. Oklahoma* (470 US 68) ruled that an indigent defendant is entitled to an expert psychiatric witness to assist in the defense. The majority opinion in *Ake* was penned by Justice Marshall. Writing for the Court, Marshall said: "without a psychiatrist's assistance to conduct a professional examination on issues relevant to the insanity defense, to help determine whether that defense is viable, to present testimony, and to assist in preparing the cross-examination of the State's psychiatric witnesses, the risk of an inaccurate resolution of sanity issues is extremely high. This is so particularly when the defendant is able to make an *ex parte* threshold showing that his sanity is likely to be a significant factor in his defense."

Clearly, the role of the forensic psychiatrist as defined by the SCOTUS includes advocacy. Further, any good expert knows that in order to be persuasive, one must be passionate and that proper emotional modulation during any presentation improves the listener's experience.

The real key here is to marry these two approaches. Be impartial in reaching an opinion but once that opinion is reached, it is appropriate to advocate for that opinion with passion and verve.

## A. Glancy:

Ask the experts April 27/16

This question becomes even more pertinent in Canada since the health advocate is one of the seven roles expected of a physician according to the CanMEDS framework. The central role is of medical expert and others include communicator, collaborator, manager, scholar, and professional. Being a health advocate is a role that the forensic psychiatrist should be expected to take in certain situations. For instance when advocating for services for the mentally offender; services the mentally ill in correctional facilities, or for other important to initiatives in healthcare for our client base, it is appropriate for us to be a health advocate.

In his role as President of AAPL, Dr. Larry Faulkner made a convincing case for instituting subspecialty status to forensic psychiatry. Dr. John Bradford and myself took on this role in Canada<sup>1</sup>. This is a type of advocacy that should be encouraged. However a caution here. As ever whatever you say and write can be used in cross-examination.

**At one point in a particularly vitriolic cross-examination a lawyer asked me about a statement made in an article regarding advocating for services for our population. When I answered, perhaps unwisely in retrospect, that the article was meant as advocacy, he craftily countered "just like you're being an advocate now-is that not correct doctor?" The point is that when you are retained as an independent expert you are not an advocate for the patient. It is reasonable to defend your position, sometimes vigorously, but you are not the advocate. The use of the adverb vigorously means intellectually vigorous, not physically or emotionally. It is always important to try and keep your equilibrium and to maintain a professional manner, even in the most trying of circumstances.**

## Take Home Points:

Advocacy for your opinion is different than advocacy for the defendant in a criminal matter or for a particular side in a civil matter.