Ask the Experts

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Neil S. Kaye and Graham Glancy will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send questions to nskaye@aol.com.

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Q: Can you discuss counter-transference and forensic evaluations?

A. Glancy:

Joe, a 63-year-old man, tells you, in his heavily accented English, how he worked on a construction site for 45 years, and every day he came home, and his wife tormented him, belittled him, and verbally abused him. As he tells the story, you cannot help but feel sorry for him. He then tells you about the day that he came home and decided he had had enough, decapitating his wife and setting fire to the house. Your emotions significantly change as he tells you in detail about this horrible event.

It has been nearly 40 years since Alan Stone, who sadly died recently, challenged forensic psychiatry, arguing that forensic practice struggles to straddle two ethical systems, which is damning. (1) He noted that as physicians, if we empathize with the patient, we may twist justice or distort the truth; on the other hand, if we serve the needs of the justice system, we may harm the patient. Paul Appelbaum proposed to clean the slate from the ethics of therapeutic medicine and offered that truth-telling and respect for persons are sufficient to keep our primary duty to justice or a third party in check. (2) Ken Appelbaum suggested using what he called "forensic empathy." (3)

With my colleagues at the University of Toronto, we proposed introducing the concept of detached concern, as described by Halpern, for use in forensic psychiatry. (4) We argued that this concept allows a forensic psychiatrist to search for truth without the over-identification and impaired judgement that can result.

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In the case of Joe above, it can be seen that initially, perhaps, a positive countertransference could affect the objectivity of the forensic psychiatrist. Later in the interview, as one perhaps recoils in horror, negative countertransference may affect the search for the truth. For the purposes of this article, I will assume that negative or positive countertransference may result in bias. As far as I know, this is an untested but intuitive hypothesis. Nevertheless, being aware of and measuring the level of detached concern may preserve the forensic psychiatrist's assessment role, which requires striving for objectivity and honesty.

This problem should dictate whether a forensic psychiatrist takes the case at the initial entry point. For example, if the forensic psychiatrist hears the "elevator summary" of the case and recoils in disgust and anger, they should consider whether it is ethical for them to take the case. On the other hand, and perhaps this is a little more contentious, if the forensic psychiatrist feels that they *must* help to get this person acquitted, they should also think long and hard about whether to take the case.

A. Kaye:

Without getting bogged down in the exact definition of countertransference (it's doubtful that two analysts would ever agree to the same definition), let me approach this question as: "How do I deal with the feelings I have toward a particular evaluee/case?" Obviously, these feelings could have either a positive or negative valence; both warrant recognition and management.

It is perfectly normal to have feelings about a case. These usually begin as soon as the first contact is made with the referring party. In some instances, you may be so affected as to desire a certain case because of possible personal gain (e.g.: it's a high-profile case and it will make you famous) or your own opinion about the topic (e.g.: death sentence) is such that you want to further your cause/political desire to change the law through participation in the litigation.

Both of these create potential minefields. Other common "hot zones" are child sexual abuse or the risk of siding with one spouse in a divorce/custody battle. Some of these topics are significant enough to cause the forensic psychiatrist to refuse the case outright. I know of two forensic psychiatrists who have sadly experienced the suicide of a child, so they won't take med-mal cases involving suicide. The bottom line: if you know you have a bias that is going to influence

(continued on page 7)

Ask the Experts

continued from page 6

your opinion, it's best not to take the case in the first place.

There is almost no forensic matter that doesn't involve the risk of countertransference affecting one's opinion. I try to begin the analysis by asking myself is it the person, what they did, or something about the legal system itself that is causing my reaction? The latter is often a neglected topic, but as an example, I turn down most family court work as I think that trying to solve interpersonal relationship problems via litigation is rarely the best approach. In my many years of working in the system, it seems to me that rarely does anyone "win," especially the children. If my feelings about the issue itself (usually an especially heinous criminal behavior) would impair my ability to be impartial in my assessment, I decline the case. I stopped doing capital cases for personal reasons.

I don't usually develop any feelings about the person until I have seen them face-to-face. Most evaluees don't elicit much in the way of personal feelings in me, but it does happen occasionally. It is usually related to my perception of the person's limited capacity for empathy or obvious malingering. I manage my feelings much as I do in my clinical work, by remaining neutral and being careful to not share. Remember though, positive feelings are just as problematic as negative feelings, and often harder to identify. If you "like" the person and "hope" they get their disability approved, that should be a red flag.

Recently, I did an evaluation in a criminal case where I thought the charges, while appropriate, carried a significant mandatory minimum sentence that was out of proportion to the actual risk posed by the defendant. But, I also really disliked the defendant, despite sympathizing with the behavior (to which they fully admitted). I decided to seek consultation from a trusted colleague. Their feedback was very helpful. My colleague told me they were surprised that I was so sympathetic to the defendant, knowing my own personal feelings about the criminal behavior and other views shared by the defendant. That feedback confirmed for me that I had managed to not allow my negative feelings about the person to taint my opinion about the criminal behavior itself, and made writing my report much easier.

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Take Home Points:

The AAPL Ethics Code discusses the need to strive for objectivity and impartiality. Awareness of one's own feelings about the topics we address and toward the people we evaluate is key in working to the ethical standard to which we are pledged. Seeking collegial consultation is always an option and often very helpful.

References

(1) Stone AA: The ethical boundaries of forensic psychiatry: A view from the ivory tower. J Am Acad Psychiatry Law 1984, 12:209-19
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(3) Appelbaum KL: Commentary: The art of forensic report writing. J Am Acad Psychiatry Law 2010, 38:43-5
(4) Glancy G., Chatterjee S, & Miller D. Ethics, empathy, and detached concern in forensic psychiatry. J Am Acad Psychiatry Law, 2021 49 (2):246-53