

Ethics Guidelines in a Widened Context

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Exactly three years have passed since the National Academy of Sciences (NAS) issued a report entitled “Strengthening Forensic Science in the United States: A Path Forward.”¹ Describing in detail the need for establishing enforceable standards and best practices, the document urged establishment of a federal National Institute of Forensic Science. Public responses from relevant professional organizations have varied considerably, with forensic psychiatry and psychology very far from ranking among the most prominent.

There are good reasons for this relative absence of response. Despite its considerable length, the report makes only a single passing reference to forensic psychiatry. This inattention may well reflect the highly developed state of licensing, continuing education, fellowships and internships, and board certifications that presently characterize both forensic psychology and psychiatry. Also, annual scientific meetings regularly include significant presentations covering current advances and their practical applications including standards of performance. Members of the American Academy of Psychiatry and the Law (AAPL) also enjoy the benefits of an active and experienced Education Committee.

Government Responses

Although the U.S. Congress has not yet put forth a response to the NAS report, the other two government branches have been active.

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The Judiciary

So far the judicial branch has been more visible than the executive. One especially notorious case was that of Casey Marie Anthony,² who was charged with first-degree death penalty murder in Orlando, Florida, in the death of her daughter Caylee. The prosecution offered testimony by experts from at least eight forensic science disciplines. The judge allowed these experts to present results from poorly validated work that did not meet recognized standards customary for their fields. He also did not accept the NAS report as authoritative. The acquittal that followed is widely known, along with the strong public reaction and its possible damage to the public’s appreciation for all forensic science.

Another case, *Ex Parte Neal Hampton Robbins v. State of Texas*, is currently at the stage of a *habeas corpus* proceeding.³ In 1999, Neal Hampton Robbins was convicted of capital murder of his girlfriend’s 17-month-old daughter, Tristen Rivet, and sentenced to life imprisonment. The defendant lost his first level of appeal in 2000, and the conviction was upheld at the highest level of criminal appeal in Texas two years later. The state’s key witness at trial was assistant medical examiner Dr. Patricia Moore, a forensic pathologist.

In March 2007, an acquaintance of Mr. Robbins requested a review by the medical examiner of the findings Dr. Moore had presented at the trial. In response, Dr. Dwayne Wolf, deputy chief medical examiner, reevaluated Dr. Moore’s autopsy findings and reviewed her testimony. He concluded that both the cause and the manner of young Tristen’s death were undetermined and amended Dr. Moore’s report accordingly. The district attorney requested a review by Dr. Joyce Carter who had supervised Dr.

Moore's work on the case, and she wrote a response agreeing with Dr. Wolf.

When the district attorney requested a review from Dr. Moore herself, she wrote "having had more experience in the field of forensic pathology, I now feel that an opinion for a cause and manner of death of undetermined, undetermined is best for this case." At the same time, she stated, "I still feel that this is a suspicious death of a young child."⁴ In a five-to-four decision, however, the court rejected the *habeas corpus* petition, and the defense has appealed to the U.S. Supreme Court.

Both of these cases raise serious concerns regarding the quality of expert forensic testimony. While they did not directly implicate forensic psychiatry as such, they serve to alert us to the critical importance of standards common to all the forensic sciences. In particular, they call on those who train residents and fellows to provide attentive and close monitoring. A critical aspect of this training is the carefully graded assignment of responsibility, together with appropriate independence as the student progresses.

As we anticipate the emergence of similarly challenging cases, we would do well to keep foremost in mind that, as forensic psychiatrists, we have something specific to offer, our expertise in psychology and human cognition. We need to deploy our capacity to do especially well at detecting and controlling bias. Each expert has the responsibility to guard against bias in his own work.⁵ Avoiding bias includes developing a habit of checking one's work with colleagues, and it therefore follows that regardless of their forensic discipline, experts should be available to one another to assist with a review for bias when asked. In this light, forensic psychiatrists and psychologists are in a position to be of especially significant help to colleagues in all the forensic sciences seeking to control the subtle influence of bias in their reasoning.

The Executive

The Office of the President has established a Subcommittee on Forensic Science for the purpose of informing the National Science and Technology Council and similar committees regarding forensic science.⁶ The stated intent is to achieve the goals of the NAS report, "enhancing the validity and reliability of the federal government's forensic science activities." There is an explicit expectation that best practices will be universally adopted. Representation on

the Subcommittee is broad, including the Departments of Commerce, Defense, Homeland Security, Justice, and 11 others. The website describes working groups covering ethics, certification, outreach, research, and standards. It includes a form for members of the public to submit questions or comments. The stated goal is to "identify a code of ethics or professional responsibility that can serve as a uniform code, and recommend a process for implementing and enforcing such a code."

Notably, the goal calls for less than the establishment of a governmental body to regulate the practice of forensic experts. Of course, it remains unpredictable whether and when the Subcommittee on Forensic Science will render a public result from its work. Meanwhile, the executive branch recently issued a formal detailed manual to guide the judiciary on how to respond to forensic evidence offered at trial.⁷ This is the third edition of the National Research Council's *Reference Manual on Scientific Evidence*. The second edition was issued in 2000. Intended to assist judges in the handling of cases involving complicated scientific and technical evidence, it contains new chapters on neuroscience, forensic science, and mental health. The 84-page section on mental health covers well the gamut from the expert's qualifications, through the conduct of the assessment, the uses of testing, and the application of mental health findings to the legal issues, all illustrated by a case example. At the very least, any forensic mental health expert would be well advised to consult the reference manual in preparation for cross-examination.

Additional Concerns

In addition to keeping abreast of what is occurring at the federal government level, forensic psychiatrists have good reason to attend to the potential impact of both the public's opinion and ongoing professional developments. There are overt and covert forensic hazards connected with the development of the DSM-5,⁸ particularly in the secrecy attending some proceedings. Our field is experiencing rapid progress in such areas as violence risk assessments, evaluation of malingering, the use of restraints and seclusion, and the pharmacologic management of aggressive behavior.

Neuroscience is no longer a stranger to the courtroom, and its continuing development will test our ability to keep our standards up to date so that justice can be optimally served, as is evident from the neu-

rosience section of the new National Research Council's reference manual.

It is worth noting that the topics discussed here are in parallel with current general developments in bioethics. The question of whether ethics guidelines actually give guidance is itself in play,⁹ primarily because of the challenges in reducing theory to practical application, the large number of ethics codes, and the difficulties that can occur when relating ethics concerns to legal proceedings.

Finally, we would do well to keep in mind the weightiness that our opinions can have¹⁰ and strive to make our conduct and its codification clear, concise, and open to inevitable appropriate development.

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