

# Peer-Reviewed Articles

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## Ethics In Forensic Psychiatry: A Cultural Response To Stone and Appelbaum

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**Dr. Alan Stone has argued that forensic psychiatrists lack clear guidelines about what is proper and ethical with respect to their professional activity and consequently, that they ought to stay out of the courtroom. Dr. Paul Appelbaum and others have responded to Stone's critique with proposals that provide a countervailing framework of ethical guidance for forensic psychiatrists. It is this author's contention that both sides in the debate have ignored the issues that are important to forensic psychiatrists who belong to culturally nondominant groups in the United States. As a result, African-American forensic psychiatrists are likely to be troubled by an ethics framework that ignores their special struggles linked to the matter of race. By gutting the debate of any reference to a cultural context, the participants have enunciated a culture-free theory of ethics that is an ineffective tool for the black professional. The author argues for a reworking of the theoretical reasoning behind the debate that would ultimately render the debate more relevant to the professional life of African-American forensic psychiatrists and those from other nondominant groups.**

... Useful prescriptions for problems as complex as those generated by the large, rambunctious, multiracial society of the United States can arise only from thinking that frees itself of reflexive obedience to familiar signals.—  
Randall Kennedy<sup>1</sup>

It has not been difficult to understand why Dr. Alan Stone's "concern about the ambiguity and ethical boundaries of fo-

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rensic psychiatry"<sup>2</sup> has evoked so much reflection among forensic psychiatrists.<sup>3-6</sup> In his thoughtful analysis, which struck at the very heart of the subspecialty, Stone<sup>2</sup> lucidly posed a number of questions about the forensic psychiatrist's professional activities. Does the forensic psychiatrist have something true to say to the courts? Does he twist justice and fairness to help the patient? Does he deceive the patient in order to serve justice? Is he prostituting the profession? In addition to raising those questions, Stone also argued that forensic psychiatrists lacked clear guidelines about what was proper and ethical. Stone's commentary was hearten-

ing only in so far as he conceded that his view had an ivory tower perspective and that despite what he had to say, courts were requiring more and not less psychiatric testimony. But it was disheartening because his concluding recommendation was that forensic psychiatrists ought to stay out of the courtroom.

Dr. Paul Appelbaum<sup>6</sup> responded to Stone's arguments with a proposed framework of ethical guidance for forensic psychiatrists. I shall ultimately return to my own view of Appelbaum's recommendation and also explore the utility of his suggested principles to a forensic case in which I have been involved. But I intend first to consider certain aspects of Stone's reasoning from my own peculiar vantage point, which I consider to be at a nexus of the academic ivory tower and the trenches.

Because I think it relevant in this debate with my colleagues, I mention that my Afro-Caribbean birth makes me undeniably black. Hence, I will not subscribe to what Gates calls "that comforting old lie."<sup>7</sup> That is to say, I am not a forensic psychiatrist who happens to be black. I also know well the struggle described so graphically by one of Lawrence-Lightfoot's African-American subjects who, asked why a colleague could not just relate to her as an individual and not a black, responded with an aching heart that "her full identity had to be engaged in any real discourse."<sup>8</sup> I confront this "burden of representation"<sup>7</sup> (at p. XVII) squarely and articulate my struggle with the authenticity of my identity because it is my contention that any theory of forensic psychiatry ethics must be

helpful to the black professional, or it becomes an insufficient and ineffective tool.

In summary, therefore, I wish in this article to accomplish several objectives. I intend to evaluate Stone's reasoning in reaching the conclusion that, lacking ethics guidelines, forensic psychiatrists ought to stay out of the courtroom. I shall assess Appelbaum's response to Stone and Appelbaum's recommended ethics framework for guiding forensic psychiatry. I shall explain why, as an African-American forensic psychiatrist, it is important for me to stay in the courtroom. I shall also offer an alternative ethics framework in which I couch my activity as a forensic specialist.

### Stone's Two Narratives

In his disquisition on forensic psychiatry and its problematic ethics base, Stone presented two narratives that deserve substantive consideration. The first story was taken by Stone from Nigel Walker's text<sup>9</sup> and described the 1801 cross-examination of Dr. Leo, a Jewish physician who was in court to give evidence on behalf of a Jew who had been caught stealing spoons. Apparently, this was Leo's third appearance at the Old Bailey to give helpful testimony for one of his Jewish patients who had been apprehended on a charge of shoplifting. The prosecutor evidently wasted no time in making the point that Leo had a special affective connection to his Jewish patients and was there in court as a 19th century "hired gun" to get the defendant off on the ground of insanity. While Stone acknowledged the anti-Semitism that permeated

the prosecutor's questioning, he also concluded that Leo's purpose in testifying was essentially to "help a fellow Jew escape what the law of the day considered just punishment."<sup>2</sup> Using Socratic methodology, Stone left us with the unavoidable notion that Leo had no real psychiatric truth to tell the court, had twisted justice and fairness to help his patient, and had thereby prostituted his profession. Stone was merciless in pointing out that whether one used the good clinical practice standard or the scientific standard, Leo had no truth to tell the court. Stone accused Leo of going to court out of sympathy for his Jewish patient and acting on the impulse to be a healer and relieve suffering.

The second narrative was called by Stone the "parable of the black sergeant."<sup>10</sup> A black Army sergeant was caught stealing a deodorant stick from the post exchange. He was suspected of earlier thefts, and the military authorities found numerous other stolen government items, such as blankets and uniforms, at his home. The Army ordered a court-martial of the sergeant, who was examined, as part of the legal process, by a civilian psychiatrist. That psychiatrist concluded the sergeant was a kleptomaniac and that the stealing was therefore due to unconscious and irresistible impulses.

The Army sought another opinion about the defendant-sergeant and sent him to an Army hospital for evaluation. The psychiatrist this time was Dr. Stone himself. Stone elicited an historical narrative of a black man who had grown up in a Southern segregated city amidst a

very religious family and who had done well in school. After graduating from a small college, the black youth was unable to find work and was eventually drafted into the Army. When his time was up, he reenlisted because he envisaged no reasonable extramilitary employment opportunities. In the sergeant's view, his life in the military was characterized by anti-black, racist discrimination, which in turn made him progressively bitter. The sergeant's anger and frustration led to his feeling entitled to steal Army property. Stone found no evidence of kleptomania or any psychiatric disorder that would have excused the sergeant from responsibility for his criminal acts, and he testified to that effect. The black sergeant was subsequently sentenced to five years at hard labor. Stone, in his account of the story, acknowledged a sense of dismay at the result of the trial and conceded that something terrible had occurred.

Stone attempted an explanation of the two psychiatrists' findings. The civilian psychiatrist apparently dealt with the defendant's unconscious and the symbolic meaning of the thefts and therefore arrived at a diagnosis that might induce many of us to be forgiving of the defendant's acts. Stone saw himself as applying psychiatry in an objective way; it was his historical and moral perspective that led him to a position from which there could be no excusing of the sergeant's behavior. Interestingly enough, Stone considered the civilian psychiatrist to have excluded history and morality from the theoretical conceptual model that led the civilian psychiatrist to the potentially exculpating diagnosis of kleptomania.

Stone found it ironic that he himself was open to social considerations and evaluated the sergeant in light of his experiences as a black man in the United States, a country with a particular culture and history of racism. Yet, he reached a conclusion that allowed him no room to articulate an understanding of the defendant's acts that could even result in his obtaining a lighter sentence. Stone conceded that he had betrayed the sergeant and placed it at the feet of his own moral and historical perspective on the subject of racism, blaming it on his conviction that psychiatry was objective.

If I understand Stone's own contemplative view of his participation in the parable of the black sergeant, particularly as he described it in a later communication,<sup>11</sup> he was especially concerned that after using his considerable therapeutic skill to extract damaging personal revelations from the sergeant, he then went on to betray the sergeant's trust. Stone found it seriously problematic to behave like a double agent, seducing the sergeant into thinking about the encounter as one between therapist-doctor and patient, while going about the business of conducting a forensic evaluation. Furthermore, his ultimate conclusions about the sergeant's stealing were reached by accenting his professional obligations and ideology and downplaying the consequences of his psychiatric and medical reasoning. Stone was, therefore, less than satisfied with his contribution to the sergeant's going to jail, even though the psychiatric work was of high quality. As a result, he ultimately concluded that the story of the black sergeant was one more reason for

the psychiatrist to stay out of the courtroom.

### **Critique of Stone's Narratives**

I derived three cardinal points from Stone's narratives, the centerpiece of which was that psychiatrists ought to stay out of the courtroom. My second derived conclusion was that Leo misused psychiatry in a political sense and made a 19th century attempt to twist justice, under the impulse of wishing to be helpful and behaving like a physician-healer. In my third point, Stone used the story of the sergeant to show how he deceived the sergeant in an attempt to serve justice, an act that demonstrated once again the confusing ethics base of forensic psychiatry and the malignancy of the phenomenon of double agency.

In the first narrative, Stone had no patience with Leo and the attempt to introduce a political stance into the courtroom practice of forensic psychiatry. In the second story, Stone marveled at the outcome when he tried to be an objective practitioner in the courtroom where the black sergeant was on trial. The contrast between Dr. Leo's political activist stance and the objectively neutral position of my colleague and friend, Dr. Stone, is striking indeed. Dr. Appelbaum<sup>12</sup> has suggested that a good reason Stone was thunderstruck, so to speak, in the military case had to do with Stone's realization that his opinion had caused the sergeant harm, five years' worth of hard prison labor, after a lifetime of possible discrimination and oppression. Appelbaum couched his commentary in the familiar ethics language of the physician's traditional duty

to do his work with beneficence and non-maleficence. However, I think that his analytic approach to Stone's dismay and discomfort partly missed the mark; for one thing, it is misleading to examine Stone's stance without spending some time thinking about Leo.

I would hope that Dr. Leo holds some interest for psychiatrists who, like Stone, evince an interest in and sensitivity to history, morality, and human values. Leo and his patient belonged to a nondominant religious and ethnic group which, if I understand Stone correctly, was coping with persecution from the dominant non-Jewish group. It is not difficult, then, to frame Leo's story as an example of acculturative adaptation to the reality of dominant/nondominant group interaction.<sup>13</sup> Recognition of this framework should help one to put the struggles of Leo into a different context. With a modicum of historical information in hand, one could argue that the doctor likely had the task of defining his adaptive stance toward the dominant group and establishing the degree to which he belonged culturally to both the nondominant and the dominant group.<sup>14</sup>

Stone's rush to judgment of poor Dr. Leo did not do justice to the Jewish physician's attempt to help out his fellow Jew. And keeping Leo out of the courtroom does not simplify the complexity of his struggles. Neither does it get rid of the enormous implications of a Jew's being in a courtroom where the rules are set by the dominant non-Jewish group. I anticipate that some colleagues will invoke quickly the principle that the anti-Semitism the Jewish thief would have faced

was not a psychiatric matter. For the sake of this debate, let me grant this is so. But what is Leo to do then? His friends, Jews and non-Jews alike, would have told him that a Jewish defendant could hardly expect to find objective justice in that courtroom. Whether true or not, it would have been a powerfully held impression. So then, Leo would have asked himself what role he was to play in this theatrical drama. Stand on the sideline—a member of the nondominant group who possessed a certain amount of skill and expertise—while his brother Jew had justice meted out to him? Or jump into the fray to be helpful in any way possible? At this point, let it be clear I am not yet advocating that Leo should have twisted the truth to help his patient. But I am maintaining forcefully that Leo's options were more complicated than Stone portrayed them.

Stone would make believe that Leo, in the forensic context, misperceived himself solely as the simple agent of his patient, a misperception that would have flowed naturally from the ethical dialectic of the healer. To put it in more modern terms, Leo confused the tasks of healing and the forensic evaluation, thereby becoming an unethical double agent. I counter that Stone understated the pressure on nondominant-group forensic psychiatrists to perceive themselves as potential agents of their own nondominant group. In a certain sense, once the judicial process started against the thief, it could be seen as the work of political machinery.

Theorists like Frederick Hickling<sup>15</sup> would readily argue that the situations of the Jewish thief and the black sergeant were but manifestations of a political

**Table 1**  
**Potential Outcome of Acculturative Interaction Between Dominant and Nondominant Groups<sup>a</sup>**

| Nondominant Individual's Cultural Identity Valuable | Positive Relations Sought with Dominant Group | Outcome of Acculturation |
|---|---|--------------------------|
| Yes   | Yes   | Integration              |
| No  | No  | Marginality              |
| Yes   | No  | Resistance               |
| No  | Yes   | Assimilation             |

<sup>a</sup>Adapted from Berry and Kim.<sup>13</sup>

struggle for dominance of one group over the other. By extension, Leo chose to identify himself as an agent of the group to which he owed political allegiance.

Leo must then have asked himself if he could afford to stay on the outside of it all. Of course, both Stone and Appelbaum, by their silence on the matter, suggest that the legal machinery in which Leo was caught up turned justly and fairly. But I expect that Leo could very well have been suspicious of the court's integrity. Current day scenarios evoke similar mistrust, as reflected in the ongoing discussion of how the police and the criminal justice system have dealt with the Black Panthers.<sup>16</sup> This reframes even more urgently the question of whether the nondominant group psychiatrist can stay on the outside of a process directed by the dominant group, which cannot be trusted in its dealing with nondominant group members.

Of course, that question is at the heart of Berry and Kim's<sup>13</sup> formulation of the possible mechanisms of adaptation that are open to members of a nondominant group facing daily interaction with dominant group members. As seen in Table 1, thoughtful and active nondominant group

membership requires confrontation of two questions. Is my own group identity of value? Shall I pursue friendly relations with the dominant group? One can obviously answer "No" to both questions and then pursue an existence characterized by marginality with respect to both groups. The individual also has the option of answering "Yes" to both questions, which leads to the adaptational style that is defined as integration. Answering no to the first question and yes to the second question leads to the acculturative style known as assimilation. Conversely, answering yes to the first question and no to the question about relations with the dominant group results in the adaptational stance that is defined as resistance.

Even in light of the minimal information Stone presented us about Dr. Leo, it seems evident that our 19th century personage was no marginal character; and given the role he defined for himself with respect to his Jewish patients, it is difficult to conclude that he was an assimilationist. However, I do not think we know enough about him to determine whether he had opted for resistance or integration. The difference between these two latter positions is important, and it deserves

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fuller commentary elsewhere. For the present, it is sufficient to make clear the complexity of the decisions that faced Leo.

Randall Kennedy<sup>1</sup> recently described the pressure on black attorneys to eschew joining prosecutors' offices because they feel that doing so will entail "selling out" and working for "the Man" (at p. 4). Kennedy grasped the problem for black officers of the court to figure out the meaning for themselves of their own black identity while seeking some accommodation with a system of jurisprudence that was elaborated and remained controlled by the dominant white group. Furthermore, Kennedy appreciated that his lawyer-colleagues' efforts were compounded by a pervasive feeling within African-American communities that the law enforcement system was overwhelmingly racist (at p. 4). Obviously, without working within the framework of a cultural psychiatrist, Judge Higginbotham<sup>17</sup> unabashedly framed the questions I have articulated here for Clarence Thomas, a Supreme Court Justice whom many blacks feel has had difficulty writing any decision that would show justice being tempered by mercy toward blacks. Some people might classify Justice Thomas as someone who has decided to strike an assimilationist pose. Whether this is true is less important than the reality that professionals belonging to a nondominant group are expected to reflect seriously on the nature of their acculturative interactions.

Cross,<sup>18</sup> in approaching these issues from the perspective of nigrescence psychology, has sensitized us to the complex

undertaking of discovering one's blackness, of developing a mature cultural identity as part of the black group and growing comfortable with one's sense of self. Cross has made it clear that black identity development, or nigrescence building, is a complicated longitudinal undertaking that for some individuals may require several cycles throughout the life span. Inherent in Cross's theory is also the notion that not all blacks will end up with the same cultural identity. (I also credit Cross<sup>19</sup> with drawing attention to the contrasts and similarities in the struggles of African-Americans and Jews to decide whether taking the assimilationist or resistance path makes one a good or bad nondominant group member.)

It is worth noting that the story of the black sergeant provides an intriguing lens through which to view the interaction of Stone and his black subject. Stone has, of course, already vigorously done away with Dr. Leo and will have no truck with Leo's type of testimony. So Stone approached the black sergeant with good-sized countertransference baggage, promising himself and possibly the sergeant that he would be open to hearing the whole story about what the sergeant had done. I sense the interplay of Leo's story and the black sergeant's. Stone will not distort what the black man has to say, and he was ultimately morally offended by the conclusion that the black man's life would be ruined by serving a stiff jail sentence. Stone was exasperated by his own behavior, by having fallen into the trap of double agency. Why he was so hard on himself is due, I suspect, to Stone's exquisite sensitivity to all that is

unfair in life. He knew the black man had suffered, and we are left to guess that Stone had some sympathy for the black man's experiences. But Stone will not be a party to a political act in the courtroom. He will be the physician-scientist to the hilt. And since, in that instance, the story of the black man will not buy acquittal or even some modicum of mercy, Stone concluded that he should not have been in the courtroom to give testimony.

The most disturbing element of this drama is that Stone never explained how withdrawing from the court would have helped the black defendant, an issue that is of paramount interest to me. I speak here of political helpfulness, not the romanticized view of a physician's work. Leo at least understood what it meant to use his professional status to effect good for his fellow Jews. Stone rejected that and wants to stay out of the courtroom, leaving the political act of helping to someone else. Then, when the black sergeant is ground up and spewed out by the jurisprudential machinery, Stone is upset. He must bear the responsibility for wanting to walk out, just as he must bear it for staying and giving testimony in the way he did. Returning, then, to Dr. Leo, I posit that the Jewish physician was a metaphor for the struggles of the nondominant group forensic psychiatrist; and that Stone glossed over the depth of Leo's cultural struggles.

I cannot follow my distinguished colleague down that track. Furthermore, I need resort to no complicated scientific or philosophical argument as I state squarely that I hope a well-trained African-American psychiatrist would have carried out

the same thorough assessment as Stone did. But I could also expect the black psychiatrist to understand that what he said may have had a significant impact on the sergeant's life and the eventual outcome of the case. I would want the black forensic specialist to be aware that dominant/nondominant issues are in play at every step of a judicial process obviously controlled by the dominant group. How the black forensic psychiatrist is to play out his role is worth further analysis.

### **Appelbaum's Thesis**

In a recent work,<sup>6</sup> Appelbaum has articulated a theory of ethics or a set of principles that would constitute the ethical underpinnings of forensic work. In his introductory reflections, Appelbaum first distinguished between moral rules (the generalizable maxims that proscribe behavior likely to cause harm to other people) and moral ideals (which encourage actions from individuals to prevent and relieve the suffering of others). Then he proceeded to explain how members of a profession may identify certain values that they wish to emphasize and ultimately transform into moral rules.

He next took on the fundamental task of explaining why the current ethics principles that govern medicine in general cannot be applied to the activities of physicians in every single context. These principles, succinctly conceptualized as the principles of beneficence and non-maleficence that are rooted in the physician-patient relationship, would not be applicable to a physician carrying out a clinical research protocol, for example. Appelbaum argued, therefore, for the dif-

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ferentiation of ethics principles to cover the precise functions carried out by subgroups of physicians. By extension of the argument, forensic psychiatrists conducting evaluations for which there is no traditional physician-patient relationship should not be covered by traditional ethics principles.

Appelbaum looked for the societal moral value that forensic psychiatry was expected to promote and concluded that it was to advance the interests of justice through the fair adjudication of disputes and the determination of innocence or guilt. As ethics principles that should guide the work of forensic psychiatrists, Appelbaum identified two cardinal notions: truth telling, which is characterized by both subjective and objective components; and respect for persons, which Appelbaum argued should be based primarily on making sure that subjects of forensic evaluations understand that the psychiatrist is not in a traditional therapeutic role.

However, Appelbaum also made clear that forensic psychiatrists still had a duty, in addition to advancing the pursuit of justice, to observe the mainstays of medical ethics (beneficence and nonmaleficence) in professional activities in which there was no conflict with forensic psychiatric functions. Nevertheless, this should not be seen as support for a model of mixed duties, something that Appelbaum did not concede. He considered the traditional ethics principles of beneficence and nonmaleficence, which undergird the value of promoting health, as distinctly far from the forensic value of advancing the interests of justice.

## Critique of Appelbaum

It is troubling that in Appelbaum's analysis it was taken for granted that the justice system was thoroughly just and fair, or that at least it promoted fairness for the greatest number of people. Appelbaum simply never considered Kennedy's concern, raised earlier, that in the African-American community, there exists a pervasive feeling that the legal system is corrupted by racism. This creates two fundamental problems for the minority forensic psychiatrist. The first problem is related to Appelbaum's insistence on truth telling. Members of the minority nondominant group have a difficult time understanding how dominant group members, in accenting trust and objectivity, still end up with a system so supportive of the dominant group's interests. The second problem, of course, naturally flows from the first. A system that is so pervasively contemptuous of blacks clearly has little regard for the humanity of African Americans. Therefore, without meaning to, Appelbaum appears to demand adherence to criteria that nondominant group members think dominant group members cavalierly dismiss at their convenience. Similarly, Mossman,<sup>20</sup> in approaching the question of whether expert psychiatry testimony is inherently immoral, explained why punishment is a desirable objective of the justice system but ignored the differential application of punishment to dominant and nondominant groups.

Having told Appelbaum that he ignored nondominant forensic psychiatrists as he articulated his theory of ethics, I

recognize my own sympathy for Stone's critique of this aspect of Appelbaum's thesis. Without making reference to non-dominant group psychiatrists, Stone<sup>11</sup> recognized the potential for forensic psychiatrists to be overinvolved in their evaluations, with the ultimate result of distorting their findings. Stone found the failure of Appelbaum to address this potential for overinvolvement a significant weakness in Appelbaum's argumentation. This is a special dilemma that plagues the non-dominant forensic specialist, and it deserves clear acknowledgment.

I wish to emphasize where I part company with Dr. Appelbaum. It is not that I disagree so much with his reference points of truth telling and respect for persons. My contention is that he assumed too readily that in the general application of his principles, all of the actors in the judicial drama would arrive at the same point. Framed another way, he ignored the political factor that probably made Dr. Leo quake in his boots because of the fear that few individuals would take the time to find out the whole story about how the Jewish spoon stealer came to take the spoons.

It may sound like a hair being split between Appelbaum and myself. But I cannot be sure to what degree forensic psychiatrists who are dominant group members will take seriously the evaluation of black subjects using truth telling and respect of persons as reference points and describe what Caribbean commentators love to call the "real reality" surrounding the black defendant's commission of the crime. I already anticipate the provincial view that my concept of the

whole story is a version of the truth that exculpates the black defendant. That would be a patent distortion of my argument; and were it my claim, the result would of necessity be a restatement of Stone's "double agent" problem.<sup>11</sup> I am not wedded to every black defendant's exculpation. But I do ask that their forensic psychiatric evaluation be as thorough as possible and stem from a belief in the profound respect of blacks as persons. The point is, besides the rhetoric, we need some mechanical technique that favors the implementation of an evaluation founded on truth telling and respect of the defendant. That technique I shall describe shortly.

I recognize that I have raised questions about the commitment of dominant group professionals to describing the "real reality" of minority group individuals who are defendants. At the same time, I do not intend to suggest that all minority individuals are committed to truth telling and respect of black defendants. In a recent case in which I participated, the intolerance of truth seeking and the antiblack rhetoric was as powerfully enunciated by a black columnist as by any others.<sup>21</sup> Furthermore, I concede fully that sensitivity to one minority group does not assure sensitivity to the panoply of minority groups that one may encounter.

## Discussion

It should be clear that a cardinal principle of the counterframework I offer is that the forensic psychiatrist, and especially the minority group forensic specialist, must stay in the courtroom. Stone employs an ethics-based argument to

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reach the conclusion that I, as a minority group forensic psychiatrist, should abandon the courtroom. But my sympathy is with my political theorist-colleague, Frederick Hickling.<sup>15</sup> The courtroom is very much a political marketplace, and I do not see how my departure from participation in a central societal institution such as the court will benefit my black brothers and sisters. In fact, I am persuaded that my departure would add more weight to the heavy burden of black defendants. So, on sociopolitical grounds, I will stay. Having vigorously staked that claim, I now must turn to articulating the framework that guides my own behavior.

Here I return to Appelbaum's recommendation of the two bulwarks that he has found so useful, truth telling and respect for persons. I adhere to the precepts offered by Appelbaum but argue that they must be cast in a framework that is illuminated by the political reality of dominant/nondominant group interaction in the United States. The forensic psychiatrist must seek the psychological and sociocultural truth about the subject and his behavior. This search must be fueled by a profound respect for the subject as a person. The important question is how to implement this practically.

To do so, I introduce the notion of the cultural formulation, a concept that colleagues and I have been recommending for greater use in clinical psychiatry and that I suggest would be useful in forensic psychiatry. Mezzich<sup>22</sup> has outlined the characteristics and usefulness of the cultural formulation in both diagnosis and clinical care. It represents an attempt to contextualize the patient's illness and to

include both standardized and personalized elements. Translating this into the forensic arena would require that the evaluating forensic specialist understand the subject's personal perspective on the incident under review; the cultural identity of the individual such as behavioral or ideologic ethnicity; cultural factors relevant to the individual's illness; cultural factors relating to the individual's social environment and functioning; and any relevant intercultural elements of the relationship between the evaluator and his subject. The intent of using the cultural formulation in the forensic context is to enhance one's understanding of the subject being evaluated and the subject's experience, as well as to improve the appreciation of the subject's psychosocial environment. The cultural formulation should serve to construct a fuller story of how the forensic event occurred.

It is important to see how use of the cultural formulation and my wish to stay in the forensic arena can be brought together in a practical fashion. I can examine that intersection through a rapid review of my participation in the well-known Tawana Brawley case, although I intend no reassessment of what I said as a witness in the case. Ms. Brawley was a young African-American female who had asserted the claim that she had been raped repeatedly by a number of men during several days. Investigation of the incident was covered by national media, with the result that very quickly politicians and other commentators of all stripes and hues were giving their views of what had transpired. Another forensic psychiatrist and I were invited to enter the case and

examine the medical evidence that existed. The task was to determine whether and in what way the medical and psychiatric evidence could help the investigators reach an opinion about the veracity of the young woman's assertions.

I soon realized that there were many people who were opposed to a black expert's participation in the case. Others were pleased that I was there and hoped I would reach a conclusion that supported their political interests. However, what was most important to me was that, as a black forensic specialist, I had the opportunity to assure that Ms. Brawley and her claims, which were intricately linked to her racial identification, would receive maximum respect. But then I proceeded with determination to seek the truth and to leave the chips wherever they fell. I paid maximum attention to establishing a cultural formulation of the data and ultimately arrived at a conclusion that did not support Ms. Brawley's claims.

In explicating my activity in the Brawley case, there were three major ways, in addition to the one I used, of approaching the role. First, I could have defined a narrow role, characterized by neutrality and objectivity, steadfastly ignoring the sociopolitical context in which the incident had occurred and unwittingly identifying with the dominant white group as I sifted through the clinical and other data. I could then have reached my conclusion unconcerned with the implications of my findings or turning an intentional blind eye to what the results meant for Ms. Brawley and her supporters.

The second possible role would have required me to identify closely with the

oppressed nondominant group of which Ms. Brawley was a member. Then I would have simply distorted the factual basis of my findings to serve the political end of the nondominant group, Ms. Brawley, and her political supporters.

A third possibility would have required clear identification with the dominant white group. This would mean the explicit pursuit of a political agenda intended to thwart the claims of an outspoken group of blacks who sought to prove that once again a black woman was being demeaned and humiliated by white men.

I am aware that I have just delineated the important potential of the forensic expert to be ensnared not by the phenomenon of double agency as Stone defined it, but by the possibility of poly-agency in a sociopolitical sense. It is precisely this capacity to pick one's path through the minefield of forensic work that defines the accomplished expert.

I reemphasize, with credit due to my colleagues at Yale, that mastery of the evaluation of members of certain minority groups does not mean mastery of all minority groups. While I have talked here of the intrinsic problems of evaluating African-American subjects, my female colleagues continue to remind me that the task of carrying out a thorough assessment of women with the resulting cultural formulation is still poorly done by many males; and that refrain is repeated by my Hispanic colleagues who lament the basic errors committed by non-Hispanic psychiatrists operating in the Hispanic arena.

This all takes me back to Appelbaum's advice<sup>6</sup> that forensic psychiatrists, to avoid violating the rule regarding respect

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for persons, should make clear to their subjects who they are, which side they are working for, and that they are not serving a treatment function. But none of those three demands encompasses the real authentication of the black forensic psychiatrist's identity. Indeed, in the Tawana Brawley case, everyone knew the answer to Appelbaum's questions as they concerned me. However, what everybody really wanted to find out was what kind of black I was. In Cross's terms,<sup>19</sup> what was the salience of blackness in my identity, and was I an afrocentric or eurocentric black man? Forensic psychiatrists will answer those questions privately. The point is that as long as black/white relations remain as complex as they currently are in the United States, Appelbaum's questions will need to be expanded to include those that are of a sociopolitical dimension.

In concluding, I hope I have been successful in explicating the weaknesses I see in Stone's recommendation that forensic psychiatrists abandon the courtroom. My distinguished colleague has ignored all of the culture codes that suggest how the law is applied in the United States. I wish to underline my advice to forensic psychiatrists generally, and certainly to African-American psychiatrists in particular, that abandoning the courthouse leaves a vacuum for the mischievous to fill. However, I do not argue that we should enter the fray with no reference framework in ethics. Professor Appelbaum has provided a wise beginning—but it is, without more, rooted in a romanticized version of life in this country. African Americans know better. The basic understanding of dominant/nondomi-

nant group interaction has to tell us that too often no one has respect for the African American who is seeking justice. From that flows a natural perversion of truth seeking. My modest suggestion of using the cultural formulation in forensic psychiatry should help focus us on the complexity of the forensic evaluation.

## Conclusion

My own critics will understand that this article is only partly about my colleagues, Drs. Stone and Appelbaum; or at least it is only partly about their ideas on forensic psychiatry and ethics. My words here are also about claiming a voice in a debate that I consider of fundamental importance, and I am concerned about the unwitting collusion to exclude the voices of the nondominant groups. I seek to make no unusually militant or revolutionary statement: but how could Dr. Leo evoke so little sympathy; and how could it be sufficient to feel uneasiness at the black sergeant's ultimate dilemma? A theoretical ethics framework is not persuasive if it merely brings orderliness into the sustained interaction of dominant and nondominant group members, while preserving the traditional hierarchical relationship between the groups.

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