

Commentary: Compassion at the Core of Forensic Ethics

Michael A. Norko, MD

In 1982, Dr. Alan Stone raised a central dilemma in ethics for forensic psychiatry that has prompted significant and important discussion of the concerns about twisting justice, prostituting the profession, and operating without adequate ethics guidelines in the course of our work. In presidential addresses to the membership of the American Academy of Psychiatry and the Law (AAPL), Dr. Paul Appelbaum and Dr. Ezra Griffith have attempted to deal with Stone's challenges, the former by providing a theory of forensic ethics, the latter by advocating cultural formulation and narrative as the methodology of our work. In his present contribution, Dr. Griffith advances the idea of narrative to involve compassion for the subject of the evaluation. In so doing, he brings us to a far more satisfactory resolution of the dilemma described by Dr. Stone. The obligation to show compassion deserves to be at the core of any valuable statement of forensic ethics. The role of compassion in justice, as discussed, for example, by Simone Weil, warrants further interdisciplinary study.

J Am Acad Psychiatry Law 33:386–9, 2005

Stone to Appelbaum to Griffith: a profound challenge to forensic psychiatry and two American Academy of Psychiatry and the Law (AAPL) presidential replies. This is how the discussion of one of the most difficult themes in ethics for forensic psychiatry has gone. The pattern is reminiscent of the famous line from Franklin Pierce Adams' *Baseball's Sad Lexicon*: "Tinkers to Evers to Chance." But, like Tinkers to Evers to Chance, are these "words that are heavy with nothing but trouble?"¹ The discussion since Dr. Alan Stone's original assault from the tower at the 1982 Annual Meeting of the AAPL^{2,3} has most certainly been heavy. And indeed it has been troubling. By 1984, Dr. Jonas Rappoport had organized a response in the *Bulletin of the American Academy of Psychiatry and the Law* from 10 forensic practitioners/scholars to help overcome the collective "chagrin" at the challenge from Stone and to help clear "some of the smoke and defensiveness" (Ref. 2, pp 205, 207). Stone's challenge was profound: forensic psychiatrists have no ethical foundation to prevent them from "twisting justice," "deceiving the patient," and

"prostituting the profession" and thus have no place in the courtroom (Ref. 3, pp 209–10).

Dr. Paul Appelbaum used his presidential address to provide a theory of forensic ethics that would begin to set the foundation that Stone found lacking.⁴ Appelbaum distinguished the roles of clinical, research, and forensic practice and, for the latter, adopted a theory of ethics based on truth-telling (both objective and subjective) and respect for persons. The subjective element of truth-telling involved the forensic expert's honesty; the objective element involved the expert's delineation of the limits of knowledge (scientific and personal) and of testimony. Respect for persons required a careful explanation to evaluatees of the expert's role, to avoid the difficulties of double agency that Stone found so troubling and omnipresent.

In his own presidential address, Dr. Ezra Griffith analyzed Stone's narratives of Dr. Leo and the black sergeant and explored what he saw as the flaw in Appelbaum's response, given the sociopolitical realities of a justice system stacked against non-dominant groups.⁵ Griffith rejected the idea that the solution to Leo's ethics dilemma (how to use his medical knowledge in testimony to help his fellow Jew deal with the injustice of an anti-Semitic London culture of 1801) was to stay out of the courtroom. He found no fault, *per se*, with Dr. Appelbaum's theoretical framework, but contended that the theoretical framework as-

Dr. Norko is Deputy Editor, *Journal of the American Academy of Psychiatry and the Law*; Associate Clinical Professor of Psychiatry and Deputy Training Director, Forensic Residency, Yale University School of Medicine, New Haven, CT; and Chief of Forensic Services, Whiting Forensic Division of Connecticut Valley Hospital, Middletown, CT. Address correspondence to: Michael A. Norko, MD, CMHC, Law and Psychiatry Division, 34 Park Street, New Haven, CT 06519. E-mail: michael.norko@yale.edu

sumes a level application of fairness in the workings of the justice system: an assumption clearly out of line with the “real reality” (Ref. 5, p 180) of our American cultural history.

Griffith saw his participation in the “political marketplace” (Ref. 5, p 181) of the courtroom as an obligation to his black brothers and sisters. How to do that work and fulfill the obligation without twisting justice, as the allegation is leveled at Dr. Leo in his efforts, is—in my view—the most important and precarious element of Griffith’s argument. The approach he advocated in his response⁵ was for the evaluator to use a cultural formulation, a narrative that is at once most respectful of the subject as a person and that, by extension, seeks to convey a rich understanding of the subject’s psychosocial environment. The central goal of that approach is what makes it so important. The strong gravitational pull toward providing exculpation/distortion while seeking to provide understanding is what makes it so precarious—with ethical success probably dependent on an extraordinary level of skill and self-examination.

Candilis and associates⁶ continued the consideration of narrative in attempting to reconcile Appelbaum’s theoretical approach with Griffith’s approach to the reality of the trenches.⁶ They described narrative as an approach by which “medical knowledge is seen as storytelling knowledge” (Ref. 6, p 171). They argued that this reconceptualization of the expert’s task allows for an integration of personal morality and professional identity and integrity and is better suited to the varied and complex realities surrounding the individuals who are the focus of actual forensic evaluations. I will return to this work later for a critical element that has not been adequately noticed.

Ezra Griffith’s Personal Narrative

In his present exploration of narrative and an African-American perspective on medical ethics,⁷ Griffith has moved the discussion to what I would consider a far less precarious position, with exciting possibilities for further interdisciplinary scholarly work. His use of his own personal narrative in helping the reader to understand his argument achieves precisely the kind of integration of personal morality/identity with professional identity/integrity described by Candilis *et al.* in their work.⁶ In this issue of the *Journal*, Martinez and Candilis⁸ elaborate ef-

fectively on the power of narrative in their commentary on Griffith’s current contribution, and so I need not comment further on this topic specifically.

Griffith pursues the evaluator’s struggles with personal authenticity and representation as he further explores the nagging problem of serving justice while serving those treated unjustly, yet avoiding the pull to twist justice in the process. He acknowledges the contours of this pursuit in describing the contrasting views of two religious colleagues. One black pastor shared his view that Dr. Leo should not breach the rules of court. Non-dominant professionals should seek equity and fairness outside the courtroom through their other efforts, but they should not distort testimony. The other religious colleague commended Dr. Leo for his interest in his fellow man, recognizing in Leo’s actions the Christian injunction to feed the hungry, clothe the naked, and visit the sick and imprisoned.

From such a religious perspective, Dr. Leo is a sympathetic and defensible figure, but it is not in Christianizing this Jewish parable that Griffith has achieved an advance in the discourse of Dr. Leo’s central dilemma. This is not the essence of the “transformative stance” (Ref. 7, p 380) he wants to take. Yet, in being authentic and representative of his reference group, Griffith must acknowledge the valence of such Christian ideology in his thinking.

So what is the essence of the transformative stance to this central challenge in ethics? For me, it is the call to “recognize the pain and suffering” of those we evaluate and to “connect to them empathically” (Ref. 7, p 380). This is where I find the most captivating and stimulating element in Griffith’s construction of a “moral foundation” (Ref. 7, p 377) for our work. It can be summarized in a word that he used (explicitly) only once: compassion. It is the notion of compassion that expands the context of our work, unites it to the work of our fellow beings in society, and provides a visceral notion of how narrative might serve the disadvantaged without distortions.

The Transforming Nature of Compassion

Griffith exhorts us to accept the responsibility of doing our work as thoroughly as possible. No one would argue with that concept. But examined in isolation, the concept of thoroughness does not inherently possess the power to transform the work. One can have the detached thoroughness of an engineer or technician in carrying out a forensic evaluation. It is

when the responsibility for thoroughness has its genesis in connecting to the subject of our evaluation as our neighbor—a fellow human being in pain or distress—that it draws its transforming power.

In the example of Ms. George described by Candelis and colleagues,⁶ the authors also acknowledge the construct of compassion. In an important element that deserves fuller notice, they argue that the “compassionate professional” (Ref. 6, p 169) is drawn into multiple aspects of the subject’s suffering. The power of the narrative is precisely in allowing the flexibility for the professional to be compassionate toward the subject in fulfilling the demands of the evaluative task for the court.

Griffith uses the admonition of the Christian Bible to describe the compassionate approach to a defendant who is among “the least of these my brethren” (Ref. 7, p 379). While this connection might make sense to other Christian thinkers, it makes no less sense to followers of any of the world’s other religious traditions or to secular humanists. Statements of the Golden Rule can be found in the sacred texts of all major world religions and in most systems of ethics and philosophies.⁹ One example from the Bah’ai faith is sufficient to make the point: “And if thine eyes be turned toward justice, choose thou for thy neighbor that which thou chooseth for thyself.”⁹

A moral foundation for forensic work that is based on compassion is thus not an argument that can be easily dismissed as a parochial construct. In fact, employing this construct places our work in a larger context of human endeavor and struggle. And where else should we look to find adequate cultural justification for our involvement in the struggles of the courtroom?

Compassion already forms essential elements of the deep foundations of major faith traditions, including Chinese traditions, Buddhism, Islam, Judaism, and Christianity.¹⁰ What intrigues me about Griffith’s present work is that he has cited compassion as a major foundation of authentic forensic work. This is something decidedly more than storytelling or truth-telling or even respect for persons (as it has thus far been discussed in our literature). Surely, it invokes all these elements, but it expands the envelope of our professional obligations and opportunities. The obligations are clear. The opportunities lie in moving us off a precarious perch from which we might be tempted to blur our boundaries in attempting to right injustices.

The notion of engaging compassion toward all evaluatees brings us to firmer footing, while still addressing the problems of injustice. No special attention need be paid to those most disadvantaged by the criminal justice system. It is not a twisting of justice that is needed to serve our neighbors fully and faithfully. What is needed is an approach to justice that allows us to attend to and engage the humanity of all the subjects of our evaluations.

Having been so intrigued by this construct, I have begun to explore a rather rich interdisciplinary body of literature on the subject of compassion, drawing primarily on religious/theological, philosophical, and psychological studies. Among those capturing my interest is Simone Weil, the French philosopher, activist, and mystic of the first half of the 20th century. Among her rather scattered essays are several reflections on justice and compassion that are highly relevant to the present subject. In an essay on our struggle for justice, Weil begins by quoting the ancient Greek, Thucydides:

The examination of what is just is carried out only when there is equal necessity on each side. Where there is one who is strong and one who is weak, the possible is done by the first and accepted by the second [Ref. 11, p 120].

Weil’s solution to the need to deal justly with people in situations of inequality is to find compassion for all people, based on finding a commonality among all people. In her essay, “Draft for a Statement of Human Obligations” (Ref. 11, pp 131–41) she describes the inescapable inequalities of human life toward which such compassion would be directed.

The reality of the world we live in is composed of variety. Unequal objects unequally solicit our attention. Certain people personally attract our attention, either through the hazard of circumstances or some chance affinity. . . .

If our attention is entirely confined to this world it is entirely subject to the effect of these inequalities, which it is all the less able to resist because it is unaware of it.

It is impossible to feel equal respect for things that are in fact unequal unless the respect is given to something that is identical in all of them. Men are unequal in all their relations with the things of this world, without exception. The only thing that is identical in all men is the presence of a link with the reality outside the world [Ref. 11, p 134].

For Weil, the necessary, and the only satisfactory, condition for achieving true respect for persons is a metaphysical one. She does not, however, confine this requirement to the realm of religion or spirituality. For her, this is an irreducible essence of the cloak of societal obligation laid on all of us, but especially

those of influence and power in society. Individuals vary in the proportion of their acceptance and refusal of this obligation, and by such distinctions merit or fail to merit roles of authority:

If any power of any kind is in the hands of a man who has not given total, sincere, and enlightened consent to this obligation such power is misplaced.

If a man has willfully refused to consent, then it is in itself a criminal activity for him to exercise any function, major or minor, public or private, which gives him control of people's lives. . . .

It is the aim of public life to arrange that all forms of power are entrusted, so far as possible, to men who effectively consent to be bound by the obligation toward all human beings which lies upon everyone, and who understand the obligation.

Law is the totality of the permanent provisions for making this aim effective [Ref. 11, pp 137–8].

Conclusions

I conclude where I began—Stone to Appelbaum to Griffith—emphasizing that the analogy is to a famous double-play trio on the same team. If we practice our craft (and its concomitant social role) without compassion, then Stone is probably right that we ought to stay out of the courtroom. The thorny problem of ethics that he raised 23 years ago³ is still being resolved, with what I would consider to be increasing success. Yet, there are many cases in which I shake my head (in silent affirmation of Stone's concerns) and wonder what psychiatry has to say about a particular issue raised by one side or the other in a legal conflict. Whenever my colleagues persuade me that psychiatric involvement was legitimate in situations I question, it is almost always the case that the answer to the matter of involvement is to be found in the provision of a narrative understanding of the subject as a person—the kind of understanding detailed by Griffith,⁵ Candilis and colleagues,⁶ and others.

The theoretical framework offered by Appelbaum⁴ has become a mainstay of our understanding of forensic ethics. The notion of respect for persons was first couched in the duty to clarify the forensic evaluator's role for the evaluatee, but it is a concept that has natural extensions to the discussions of compassion found in Griffith⁷ and Weil.¹¹ Griffith's concern for the professional's authenticity and representativeness is a legitimate extension of respect for persons, as is truth-telling.

Griffith's refusal to leave the courtroom and the reality of its injustices prompts the need for a theory of applied narrative that avoids Stone's concern for twisting justice and prostituting our profession. I have argued that Griffith's call to compassion for the least of our brethren is a captivating and successful solution to the dilemma in ethics of Dr. Leo. A rich literature on compassion beckons our attention and awaits further interdisciplinary insights. I am already persuaded, however, that compassion resides at the core of any valuable ethical construct for forensic psychiatry.

I close with thoughts from Weil's Epilogue, encouraging us to find their further application in our work:

Every created thing is an object for compassion because it is ephemeral.

Every created thing is an object for compassion because it is limited.

Compassion directed toward oneself is humility. . . .

Without humility, all the virtues are finite. Only humility makes them infinite [Ref. 11, p 143].

References

1. Adams FP: Baseball's sad lexicon. *New York Evening Mail*, July 10, 1910. Available at: http://www.baseball-almanac.com/poetry/po_sad.shtml. Accessed July 19, 2005
2. Rapoport JR: Is forensic psychiatry ethical (editorial)? *Bull Am Acad Psychiatry Law* 12:205–7, 1984
3. Stone AA: The ethical boundaries of forensic psychiatry: a view from the ivory tower. *Bull Am Acad Psychiatry Law* 12:209–19, 1984
4. Appelbaum PS: A theory of ethics for forensic psychiatry. *J Am Acad Psychiatry Law* 25:233–47, 1997
5. Griffith EEH: Ethics in forensic psychiatry: a cultural response to Stone and Appelbaum. *J Am Acad Psychiatry Law* 26:171–84, 1998
6. Candilis PJ, Martinez R, Dording C: Principles and narrative in forensic psychiatry: toward a robust view of professional role. *J Am Acad Psychiatry Law* 29:167–73, 2001
7. Griffith EEH: Personal narrative and an African-American perspective on medical ethics. *J Am Acad Psychiatry Law* 33:371–81, 2005
8. Martinez R, Candilis PJ: Commentary: toward a unified theory of personal and professional ethics. *J Am Acad Psychiatry Law* 33:382–5, 2005
9. Robinson BA: Shared Belief in the "Golden Rule": Ethics of Reciprocity. <http://www.religioustolerance.org/reciproc.htm>. Accessed July 19, 2005
10. Swatos WH (editor): *Encyclopedia of Religion and Society*. Hartford Institute for Religions Research, Hartford Seminary, Walnut Creek, CA: AltaMira Press, 1998. Also available at: <http://www.hartfordinstitute.org/ency/compassion.htm>. Accessed November 2, 2004
11. Weil S: *Writings Selected with an Introduction by Eric O. Springsted*. Maryknoll, NY: Orbis Books, 1998