

Commentary: The Place of Performative Writing in Forensic Psychiatry

Ezra E. H. Griffith, MD, and Madelon V. Baranoski, PhD

In this issue of the *Journal*, Robert Simon has explored the subject of the place that writing should occupy in the professional life of forensic psychiatrists. We have taken the platform so elegantly constructed by this erudite and prolific author and used it to discuss the quotidian and concrete task of writing the customary forensic psychiatry report. We look to other disciplines for mechanisms to analyze the written forensic report: concepts of voice, portraiture, and narrative. We ultimately conclude that preparing these reports is a complex undertaking and that writing with clarity, precision, and artistry in forensic psychiatry should be viewed as a core competency.

J Am Acad Psychiatry Law 35:27–31, 2007

The incisive piece from Robert Simon¹ in this issue of the *Journal* is based on the President's Lecture that he presented at the Annual Meeting of the American Academy of Psychiatry and the Law (AAPL) in October 2006. The oral presentation highlighted the end of his presidential leadership of the AAPL and symbolized, at least to us, a reliquary for ideas that he was leaving as his unique will and testament to generations of forensic psychiatrists who will read his words in future years. He has put his mark on forensic psychiatry primarily as a writer, as one who deals uniquely in the currency of written explication. We say this because of his authoritative and voluminous body of work. Consequently, we see his gift to us as a form of autobiographical exploration—a way of defining for us the unique creative process in which he has been engaged all these years.

The personal dimension of what Simon has written here—which is to say the introspective dimension—appeals to us because of our own reflections about writing that have engaged us over the past decade. Whereas he has been thinking about writing as a creative compulsion, we have been interested in conceptualizing writing as a performative element to be mastered by forensic psychiatrists. For different

reasons, therefore, we agree fervently with him that writing with clarity, precision, and artistry should be a core competency in forensic psychiatry. (This is the side obverse to the demand that forensic psychiatrists learn to speak the same way.) While he did certainly emphasize the importance of writing for our relatively young specialty, in his article he did not define writing in the terms that we will address here. Writing in the field of forensic psychiatry should be seen as an act of performance, an enterprise of artistry and cogent argumentation. In other words, we envisage writing as tied explicitly and intimately to forensic psychiatrists' tasks, their professional efforts, and their identity as clinical specialists in psychiatry and the law. Writing is not merely a pursuit that is subordinate to other activities of the forensic psychiatrist.

Simon reviewed several factors that he considered to have an impact on the process of writing. While clearly thoughtful about what elements have successfully stimulated his own writing, his reflections remained focused on what the generic business of writing is about. However, we wish to focus on the work of producing the written forensic report. We begin with a return to his reference to Osler's ideas. Simon evoked these not subtle differences among the triad of writing styles: creators, transmuters, and transmitters. Although this classification is useful, it may suggest that one type of writing is superior to the others, which we find problematic. Some in our discipline may resist this view and argue that, for example, the

Dr. Griffith is Professor of Psychiatry and of African-American Studies and Dr. Baranoski is Associate Professor of Psychiatry at the Yale University School of Medicine, New Haven, CT. Address correspondence to: Ezra E. H. Griffith, MD, Yale University School of Medicine, Department of Psychiatry, 300 George Street, Suite 901, New Haven, CT 06511.

forensic psychiatrist writer rarely engages in creative writing. But we intend to demonstrate that forensic psychiatrists must learn to disseminate information effectively in written form. They must also learn to refashion or transmute ideas so that they have greater impact and utility. Finally, forensic psychiatrists must constantly seek to be creative, both in developing new ideas relative to their work and in presenting all their thoughts in written form as attractively as they can.

We believe that medical training does not prepare physicians to write or speak artistically and effectively. The result is that psychiatrists generally arrive for their forensic training unaware that oral and written performance will constitute significant dimensions of their work. It should therefore not surprise anyone when we state that we have seen lengthy forensic reports written as a single paragraph. Other reports have had no structure and have lacked introductions, conclusions, and even a stated purpose. In each of those examples, the forensic specialist was probably unaware of what constituted good report writing and was particularly inattentive to the task of performative writing. This may not be, of course, entirely the fault of the writers. We doubt that many training programs are allocating time to contemplating the performative dimensions of writing as a core competence in forensic psychiatry.

Part of the problem may indeed stem from the belief held by so many of our colleagues that forensic psychiatry reports are objective and impersonal productions that employ principally what Verde and colleagues² have referred to as the voice of science. Our colleagues' claim about forensic reports oversimplifies the task of writing in our discipline. However, their emphasis on the voice of science has powerful currency and probably derives from our embedded traditions in general medicine. We refer here especially to the age-old business of making oral presentations as medical students about our patients to the gray-haired professor standing at the patient's bedside. These deliveries emphasized physical examination and laboratory findings that led logically to diagnostic decisions and treatment plans all developed in a context of scientific argumentation. (Of course, even this approach is changing now, as we are all aware of the impact of cultural context and the patient's newly discovered role as an informed and autonomous consumer who has the right to contribute to the articulation of the treatment plan.)

This traditional influence of medical science is visible in the conceptualization of the forensic report, as described by the authors of the "AAPL Practice Guideline for Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense."³ Here, the authors emphasized the role of medical science in the discipline of psychiatry, even though they ultimately conceded the importance of the opinion section of the report and argued that the reasoning behind the report should be carefully explained. Silva and colleagues⁴ took a similar approach in their discussion of the forensic psychiatrist's report. They put emphasis clearly on a science-based methodological approach to the written articulation of findings gleaned from the forensic evaluation.

Furthermore, as suggested by Candilis,⁵ the development of science-based written reports is probably influenced by the pervasive emphasis on objectivity and truth. In other words, forensic psychiatrists should "strive to be as objective as possible and present the truth as closely as they can determine it" (Ref. 5, p 1). Candilis has pointed out that striving for objectivity may be more attainable than objectivity itself, simply because objectivity and truth may be influenced by the expert's unique personal perspective, by receiving a fee for producing a report that must be defended in an adversarial context, by one's cultural perspective on truth, by one's preference for working for the prosecution or defense, by one's own upbringing, and so on.⁶⁻⁹ These commentators have progressively built up an argument that flies in the face of our discipline's preoccupation with objectivity and truth, which are principles presumably hewn from the rock of science. No wonder then that there is a renewed call by Candilis⁵ and by Griffith^{6,9} for us to attend to the role of narrative in reconceptualizing the ethics that undergird analysis in forensic psychiatry. With this reconsideration of ethics, it becomes quickly apparent that the creation of a written forensic psychiatry report is substantively more complicated than the outdated process of writing the so-called objective and impersonal document.

Forensic reports must contend with several human voices seeking to be heard. In criminal cases, voices of the victim, defendant, and narrator are fighting for position. In civil cases, the plaintiff, respondent, and narrator compete for dominance. However, Verde *et al.*² have pointed out that in written forensic reports, the human voices are also in competition with other abstract voices articulated by Barthes¹⁰: the voice of

truth (for example, what the legal question may be and what the precise charges are); the voice of empirics (for example, what concrete actions have occurred); the voice of the person (for example, how the narrator expresses what has happened in words that may be more or less ambiguous); the voice of science (for example, how the narrator refers to textbooks of medicine to buttress the authority of his writing); the voice of the symbol (for example, how the narrator uses metaphor to describe an act or context which in turn has one or another impact on the reader); and the voice of society (for example, how the narrator acknowledges the social valence of the criminal act). The point of our diversion here is to reemphasize that the task of writing a forensic report cannot logically be stated as simply the production of an impersonal and objective document. Indeed, we contend that the complexity of both psychiatry and the legal context belies the existence of a mere objectivity of fact without attention to the myriad voices. In other words, narrators of a written report would do well to be aware of how their pen may unwittingly emphasize a certain human voice and a particular abstract voice as framed by Barthes.

What also makes writing such a complex task is that even if the forensic expert understands all that Verde *et al.* and Barthes are explicating, controlling one's writing style still remains a challenging task:

Indeed, style is the most subjective aspect of writing: it is idiosyncratic, rather like a signature or a fingerprint; it speaks of the author's identity, experience and education. For these very reasons it is difficult to shake off when the writer wishes to produce a completely impersonal text, as a psychiatric report is meant to be [Ref. 2, p 9].

In our own excursions looking for strategic models that could effectively serve as a template for the writing of forensic psychiatry reports, we have been struck by the model proposed by Lawrence-Lightfoot and Davis that they called "portraiture":

Portraiture is a method of qualitative research that blurs the boundaries of esthetics and empiricism in an effort to capture the complexity, dynamics, and subtlety of human experience and organizational life. Portraitists seek to record and interpret the perspectives and experience of the people they are studying, documenting their voices and their visions. . . . The drawing of the portrait is placed in social and cultural context and shaped through dialogue between the portraitist and the subject. . . . The relationship between the two . . . becomes the arena for navigating the empirical, esthetic, and ethical dimensions of authentic and compelling narrative [Ref. 11, p XV].

Much as Silva and his colleagues⁴ stated in speaking about the writing of a forensic psychiatry report, Lawrence-Lightfoot and Davis¹¹ recognized the significance of science in the portraitist's work. This latter team of scholars insisted that the portraitist's work is "deeply empirical" and "grounded in systematically collected data" (Ref. 11, p 85). But by seeing portraiture as viewing human experience that is framed and shaped by the setting, they derived their perspective on context that they considered "a rich resource for examining and interpreting behavior, thought, and feeling" (Ref. 11, p 41). In a unique way, therefore, these scholars thought of portraiture as an unusual blending of science and art. In applying this to the work of constructing the written report authored by a forensic psychiatrist, we are intrigued by the notion that the written report is an intermingled result also of science and art. But in articulating this point, we wish to underline our view that these reports are more than impersonal and objective documents.

In their work, Lawrence-Lightfoot and Davis¹¹ examined the concept of voice as applied to the act of portraiture, after acknowledging that "voice" is a term used in different ways by different theorists. They argued that in using voice as a witness, the portraitist takes an outsider's stance and, like a cultural anthropologist, describes the subject of the portrait and his context from a position on the boundary of the action. However, the portraitist then goes on to use his voice in interpretation, in a search for meaning of his observations that were made as a witness from the boundary. With the voice as preoccupation, the portraitist is preoccupied with his theoretical perspectives, intellectual interests, and understanding of the relevant literature, which define the framework used by the portraitist in observations and interpretation. These first three functions of voice can be seen as efforts to collect the data with rigor and discipline, although the business of interpretation may always be seen by some as a peculiarly subjective activity. In rebuttal, we may argue that the interpretation must be influenced primarily by years of training as physicians and medical scientists, as reliable observers and interpreters of medical data.

Lawrence-Lightfoot and Davis¹¹ introduced two other dimensions of voice that deserve our attention: voice as autobiography and listening for voice. The former refers to the influence flowing from the life

story of the portraitist. The authors understandably cautioned us that the portraitist's autobiography must not obscure or overwhelm the act of portraiture, even though they pointed out that the portraitist's own life history and developmental experiences will influence the portrait. When the portraitist listens for voice, he listens for the story that is emerging from the potpourri of events and transactions collected in front of him. Both of these forms of voice contribute to the formation of distinctive portraits. These voice dimensions are linked to education and experience. However, they are also subject to the influence of subjectivity.

So far, we have tried to employ Simon's personal account¹ in this discussion of writing in the field of forensic psychiatry, to catalyze reflection on the act of creating written reports. Our point is that the ability to write a finely carved report is an essential skill of the forensic psychiatrist and deserves concentrated cultivation in our trainees. We hope that we have also pointed out the necessity of helping our students to think about what they are doing when they set about putting their ideas on paper. Said differently, the most effective writers will be those who grasp the purpose of their work, its inherent complexity, and the nature of the factors that impede or facilitate the creation of good written reports.

We know full well that we have relied on social science argumentation to buttress the authority of our own pleading. Those working at the interface of law and literature have also developed their own line of commentary about the task of writing in that domain. For example, Hollander¹² has reviewed some of the elements of classical rhetoric and pointed out the utility of ethos, pathos, and logos in legal writing. He pointed out that the writer's status and social position (ethos), the style used in communicating the information (pathos), and the logic and consistency of the argument itself (logos) play a role in the effort to write persuasively. However, Hollander understood that some writers may use ethos or pathos to enhance their persuasiveness and maximize the effect of their writing without a corresponding increase in logos.

In translating Hollander's ideas to the writing of forensic psychiatry reports, we suddenly understood why some colleagues spend so much space at the beginning of reports articulating their *bona fides*. What they are doing is employing ethos—underlining standing and reputation—to give weight to the

message that is yet to come. Others like the emphatic placement of their conclusion at the beginning of the report, as they hope that this clever employment of pathos will attenuate any lack of logos in their work.

Despite our insistence that we should, as forensic psychiatrists, be preoccupied with the task of report writing, we do not wish to ignore the objections raised by others. Here, we mention the stance taken by Leval,¹³ as he reacted to the pressure on him as a judge to write better and to consider as literature the judicial opinions he authors. Leval objected to the use of rhetorical devices to “strengthen the persuasive power of an opinion” (Ref. 13, p 207). While he conceded that judges' opinions are indeed a form of literature, that when poorly written they should be improved, and that rhetorical skill could improve them, he cautioned against deliberately adopting rhetorical techniques to enhance the persuasive power of a judge's opinion.

But make no mistake. However justified, the practice is always dangerous. Such rhetoric deceives . . . the audience. It should not be invoked without good reason and without redoubled care to ensure that the rhetoric is not offered in the place of sound judicial analysis [Ref. 13, p 210].

Leval¹³ was arguing against the use of techniques to overwhelm the sacred employment of logos in the written work of judges, thereby leading to distortion. Lawrence-Lightfoot and Davis¹¹ would similarly argue against the distortion of the portrait caused by an abandonment of the science that must undergird the work.

Dershowitz¹⁴ wasn't sure either that he liked this process of introducing literary techniques and the structure of narrative into what the law must do. He insisted that the law should develop its own rules of structure and editing “by looking to the vagaries of real human experience” (Ref. 14, p 105).

Although we acknowledge the debate about the role of literary analyses and techniques in forensic report writing, a unique feature of the forensic report is irrefutable: its psychiatric voice must penetrate legal ears. All writers are essentially unique from their audiences, but forensic psychiatry is among the few disciplines that write explicitly for a foreign audience with significantly different education, disciplinary culture, and professional language. Whereas scientists write for scientists, judges for judges, and law professors for their colleagues, the bulk of writing of forensic psychiatrists is for the legal consumer. The essential task for the forensic psychiatrist is to trans-

late a human story through a medicoscientific lens and formulate a narrative that has meaning for and use to the legal community. The forensic psychiatrist has a task different from that of the anthropologist, who in studying a different culture translates the experience into a language common to other anthropologists. The forensic psychiatrist, analyzing and unraveling the culture of mental illness, must then write for readers across a cultural divide and formulate the report and conclusions into language, content, explanations, and interpretations that the legal community can understand and use within its domain. The luxury of voice and style can be honed with experience but the essentials of the written forensic report are as fundamental to the work of forensics as mastery of psychiatry, familiarity with legal concepts, and the art and science of examination.

We have staked out a position concerning the writing of reports by forensic psychiatrists galvanized by Simon's important reflections on the place of writing in the life of forensic psychiatrists. While we hope that we have presented a cogent position, we acknowledge that not everyone will be persuaded that we are right. Still, we believe that we are correct in at least arguing for greater consideration of how we create our reports and in insisting that preparing written reports is a complex undertaking. We also hope that we have put permanently to rest the unsubstantiated claim that the task of writing a forensic report is simply the production of an impersonal and objective document.

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