

An Unwelcome Guest: The Unconscious Mind in the Courtroom

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A generation ago, psychiatrists did not hesitate to discuss psychodynamic concepts and their application to forensic practice. Many of the pioneers of forensic psychiatry, including Manfred Guttmacher in the United States and Edward Glover in the United Kingdom, were trained as psychoanalysts, and naturally this training had an impact on the development of the field.¹ Not only were psychodynamic principles used to understand and explain criminal behavior, they were also applied to the complex interactions that occurred between psychiatric experts and attorneys in the courtroom setting.^{2,3} Terms such as transference, countertransference, and unconscious motivations, traditionally only used within the context of psychoanalytic treatments, found new meaning within forensic psychiatry.^{4–6} Although some argued that a movement toward introducing psychoanalytic concepts to the legal arena diluted the purity of the psychoanalytic approach,³ by the 1970s and 1980s, psychoanalysis and its main tenets had firmly moved outside of the analyst's office and into the courtroom.

With this growth came significant challenges. Psychodynamic formulations were difficult to prove in any setting, not least within the adversarial setting of the courtroom. Whereas a hypothesis could be revised and refined within the context of a psychoana-

lytic treatment without adverse consequences, legal settings demanded a high degree of certainty about conclusions, provided a finite period for evaluation, and promised potentially devastating consequences of error. Even in the best of circumstances, psychoanalysis and the law were an imperfect fit.

Furthermore, several high-profile scandals and serious boundary violations tarnished the reputation of psychoanalysis in the latter part of the 20th century, which led to a general questioning of its value.^{7–9} These scandals, combined with the advent of psychotropic medications and a biological model of mental illness, contributed to the diminished importance of psychodynamic ideas within psychiatry. The result was that, just as forensic psychiatry began to take shape as a subspecialty, psychoanalysis lost its dominance as the primary explanatory model of human behavior.

The Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III)¹⁰ and Fourth Edition (DSM-IV),¹¹ only further served to distance psychiatry and forensic psychiatry from their psychoanalytic roots. Instead of complex formulations involving unconscious motivations, diagnosis was reduced to a checklist of signs and symptoms. The DSM approach may have enhanced inter-rater reliability of diagnoses and therefore the scientific credibility of psychiatry, but many argued that it sacrificed the heart of psychiatric formulation, the ability to explain the why, not just the what.^{12,13}

Nonetheless, DSM diagnoses had a definite appeal in the courtroom setting. Rather than explaining a defendant's behavior to the judge and jury based on projection or denial, the forensic psychiatrist could

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rely on DSM criteria that were considered objective, tangible, and scientific. Standardized tests, such as those that detect malingering or measure violence risk, were developed to aid the psychiatrist in this objective. In recent years, neuroimaging studies (magnetic resonance imaging (MRI) and computed tomographic (CT) scans) have become commonplace in the courtroom, no doubt owing to the perceived reliability of the information they provide. Not only are these scientific tests potentially more palatable to those insistent on solely empirically based opinions, they have the additional benefit of assuaging the psychiatrist's anxiety about defending a nonempirically based formulation, allowing him to base his conclusions on history and data rather than unconscious motivations and psychological defenses.

Given all of the different models of explaining mental illness and human behavior that now exist, it is difficult to know whether the recent shift away from psychodynamic formulation is a permanent one. In a world where so-called No-Lie functional (f)MRI studies and psychopathy checklists permeate the courtroom, does the unconscious still have a role? Even if we agree that psychodynamic formulation is important, is it prudent to mention it in reports or testimony, and therefore subject it to the scrutiny of highly resistant attorneys, judges, and jury members? Conversely, if we believe that we have a plausible theory relating to the unconscious that helps to explain why a defendant has committed an offense, are we obligated to bring it to the attention of the courts despite its inability to be proven?

In this editorial, we give examples of psychodynamic formulation in forensic practice using two brief fictional cases, one that demonstrates how unconscious processes may contribute to a defendant's criminal conduct, and one that elucidates unconscious processes at play in the trial setting. We then consider whether this type of classic psychodynamic formulation has any applicability in modern forensic psychiatry, ultimately advocating for its continued use.

The Unconscious Mind and Criminal Behavior

Psychiatrists who offer formulations relating to the unconscious in medicolegal reports frequently meet with resistance within the courtroom, not only from opposing legal teams, but also from jurors and judges. Despite these inherent difficulties, in many

criminal cases, it could be argued that understanding unconscious processes may be the only means of making sense of an apparently senseless act. For example, cases in which patients who are not deemed to be clinically psychotic but suddenly act out in an apparently psychotic manner can be greatly illuminated by the notion that individuals possess a latent psychotic part of their minds that can be provoked into action under certain sets of circumstances. The following fictional case study illustrates one such example:

Mr. Carson, a 35-year-old man, was facing trial for the murder of his maternal grandmother, whom he had violently raped before strangling her to death. During the evaluation, the examining forensic psychiatrist established that, as a child, Mr. Carson had been exposed to his mother's flagrant disregard for appropriate boundaries between mother and son, exposing him not only to her body by walking around the house naked, but also to the numerous sexual partners she would bring home in the absence of her husband, who frequently spent months away on business.

The assessing psychiatrist's experience of being with the defendant was of feeling somewhat smothered by the defendant's relentless insistence that he was mentally unwell at the time of the offense, and therefore that he should not be held responsible for his actions. The defendant stated repeatedly that he loved his grandmother and had had a good relationship with her.

In Mr. Carson's account of the weeks preceding the offense, he described a humiliating experience in the workplace that resulted in his losing his job as he attempted unsuccessfully to stand up to his boss. On the day before the offense, his mother had told him, after a discussion in which he admitted to his dismissal, that he was good for nothing and a waste of space. His account of his childhood suggested a disorganized attachment to his mother, contradicting himself in giving both an idealized and denigrating account of her. Psychological testing results and a review of collateral sources revealed no evidence of a major mental illness, but did confirm Mr. Carson's account of his mother's early behavior.

The examining psychiatrist formulated that the sexual assault and subsequent killing of his maternal grandmother was a displacement of unmanageable feelings of shame and humiliation evoked by his mother's critical comments in relation to losing his job. Mr. Carson triumphed over these feelings by displaying his potency in a concrete manner (through raping his grandmother), but displaced, as his unacknowledged ambivalent feelings meant that attacking his mother would have been too traumatic. His unconscious fantasy of being his mother's partner (which remained unresolved due to his father's absence and his mother's lack of sexual boundaries) was concretely displaced and acted out in an attempt to maintain a sense of internal psychological equilibrium.

In this example, it could be argued that anything short of a psychoanalytic formulation would leave much to be desired in terms of understanding the

motivations for this offense, as there is no major mental illness or secondary gain that provides an alternative explanation for the crime. In the absence of a psychiatric opinion, many jurors might explain the behavior simply by concluding that the defendant is inhuman or evil. Although the psychodynamic explanation does not necessarily provide an excuse for the behavior, it may help the jury to understand an act that is otherwise incomprehensible and provide a more nuanced explanation of the criminal behavior.

However, the prospect of recounting the details of a psychodynamic formulation in the courtroom quickly reveals a minefield of potential problems that could emerge. Despite producing a formulation based on a thorough history, reflection upon his own countertransference, and his own experience in previous cases, the psychiatrist still places himself under significant scrutiny. Any prosecutor would surely be rubbing his hands in glee at the numerous ways to discount such a psychodynamic understanding of the offense, and a defense attorney might understandably question whether the formulation is sympathetic or helpful to his client. “So, Doctor, what you’re saying is that the defendant raped his grandmother because he was ambivalent about killing his mother? Great! I’m sure that makes us all feel much better!”

Key psychoanalytic concepts such as making links between developmental stages and the offense, the countertransference experience of feeling suffocated by Mr. Carson’s manner, and developing a model of his mental structure in terms of unconscious factors are all extremely difficult to argue confidently within a legal setting. When questioned, no doubt the psychiatrist’s fundamental support for his formulation would be to state that he relied on his clinical experience. This explanation raises a key question: in the absence of a basis from which one can provide empirical support for a particular theory or formulation, is it better to accept that formulations involving unconscious processes are best left in the therapist’s office and are unsuitable for the court setting? Or should we hold firm, much like Freud himself did, and maintain a dedicated yet vulnerable position in the face of attacks on attempts to unearth the unconscious?

The Unconscious Mind in the Courtroom

Judges, attorneys, and jurors do not naturally gravitate toward psychodynamic explanations of human behavior. They are much more likely to explain

criminal behavior in terms familiar to those outside the mental health professions: right and wrong, good and evil, truth and lies. These binary choices are reinforced throughout the legal system, most notably in the ultimate decision reached in the criminal court: guilty or not guilty. By design, the system invites polarized views of a defendant’s actions to be presented by the prosecution and defense, and then instructs the fact-finder to choose between the black-and-white versions of events. Shades of gray are confusing and often unwelcome.

Regardless of his role as defense or prosecution expert, the forensic psychiatrist’s task in this setting is to present an explanation of the defendant’s behavior that helps the fact-finder make his decision. In focusing on that stressful task, it is easy to forget that unconscious processes apply not only to the defendant’s behavior before his arrest, but also in the courtroom itself. The trial process splits off different parts of the defendant into opposing versions of events, often becoming an external representation of the defendant’s unconscious internal conflicts. The following fictional example serves to illustrate this point.

Mrs. Baker was a young mother who was facing prosecution for smothering her three-month-old child. She had worked as a successful lawyer up to her pregnancy, and there was abundant evidence to suggest that in the weeks before the alleged offense, she had significant depressive symptoms and was finding it difficult to cope. Although her husband was concerned, he had not felt that she required pharmacological or psychological treatment, believing that family support and a weekly home health aide were sufficient. He was deeply shocked to come home one day and find that his wife had cut her wrists in the bath, and their child lay dead on the bed. Mrs. Baker was incoherent and difficult to understand. A subsequent emergency psychiatric assessment revealed that she thought she was a worthless mother and that her child would be better off without her.

During the trial a few months later, it was noted that Mrs. Baker, although occasionally displaying some signs of mourning, was strikingly upbeat and organized, able to mobilize her legal team into producing an argument that she had been psychotically depressed in the weeks preceding the killing. Indeed, this theory was supported by the forensic psychiatrist retained by her defense team.

The prosecution psychiatrist learned from Mrs. Baker’s history that she had been physically abused by her own mother as an only child and sometimes was kept in the cupboard without food to teach her a lesson for extremely minor misbehavior. Her father, often absent from the home, would not believe her when she attempted to tell him about her mother’s cruelty. Despite this difficult early experience, Mrs. Baker had recruited her resources and managed to complete law school, going on to become a successful employment attorney. The psychiatrist felt that there was a clear link between Mrs. Baker’s experience of a cruel and depriving mother and her preoccupation that she was a bad

mother in the weeks preceding the homicide. However, he was not as convinced as the defense psychiatrist that Mrs. Baker was psychotic at the time of the crime.

During the course of the trial, a heated debate ensued about the evidence to support Mrs. Baker's psychotic depression, as this was thought to be the crucial element of her insanity defense. There was a total disagreement between the psychiatric experts. In fact, the more they were questioned, the more their opinions differed from each other. The case had to be adjourned for a third expert to offer a re-examination of Mrs. Baker, who by now was visibly buckling under the strain of the trial.

In this fictional scenario, it is possible to see how the adversarial structure of the court system can facilitate the playing out, in external reality, of a split within Mrs. Baker's mind. There is little doubt that, in the context of attempting to negotiate the overwhelming demands of new motherhood, she started to identify with the cruel, neglectful mother she had experienced as a child. In an attempt to avoid becoming her mother and repeating what was done to her (which would have been an identification with the aggressor), a psychotic part of her mind killed off a part of herself that was projected into her child—the part representing vulnerability and need. For many years, she had disavowed her feelings of vulnerability and neediness to become a successful woman, but the conflict remained unresolved and resurfaced when she had her own child. Her extreme solution to this conflict was to kill her child, thereby eliminating the source of her intolerable feelings and preserving her identity as a strong, self-sufficient person.

During the trial, the courtroom became a depository for these fragments of Mrs. Baker's mind. The defense team held the vulnerable aspects of her in mind, seeing her as a psychiatrically unwell woman who needed hospital care, whereas the prosecution team held the cruel, neglectful aspect of her and argued that she should be convicted of murder. The clash between the assessing psychiatrists became a re-enactment of the battle between her cruel super-ego and her vulnerable, needy self. The structure and dynamics of the courtroom offered a theater space in which unconscious conflicts were enacted, with the fact-finder then left to form an integrated understanding of the defendant's inner world and actions.

Preserving a Role for Psychodynamic Formulation in Forensic Practice

Some psychiatrists may perceive these two examples of psychodynamic formulation as outside the mainstream of forensic practice. We acknowledge

that psychodynamic theory is increasingly foreign to many practicing psychiatrists, particularly those trained more recently and in residency programs with primarily a biological focus. Furthermore, we acknowledge that the type of psychodynamic formulation outlined in these two examples may never actually be brought into a courtroom, as the retaining attorney may find the formulation unhelpful to the legal case or simply too difficult to prove. Why, then, do we advocate for the preservation of psychodynamic thought in modern forensic psychiatry?

First, we do so out of respect for the history and development of our profession. Psychoanalysis was, for many years, the predominant school of thought in psychiatry, and although several of its tenets have fallen out of favor, many others remain just as relevant today as they were in Freud's era. In our view, the enduring value of psychoanalytic theory is in creating a formulation that takes into account subtle but significant developmental factors that contributed to the individual's offending behavior. Ignoring psychodynamic factors is akin to becoming a neurologist who refuses to learn bedside history and physical exam skills, instead relying solely on modern neuroimaging techniques. While it may be possible to practice this way, to do so would leave the neurologist only with a snapshot of the present pathology and without the broader historical information necessary to understand the patient's disease fully. We believe that this exclusive focus on the most recently developed models of illness, as if our current methods are totally unassailable, is misguided. A more thoughtful approach to case formulation employs whatever methods are most appropriate in that particular case and embraces rather than ignores factors that are subtle or complex. To determine the best approach, the psychiatrist must be familiar with multiple methods of formulation.

Second, we caution forensic psychiatrists against tailoring their formulations too narrowly to the requirements of the law, thereby sacrificing a more comprehensive understanding of a particular case. In most psychiatric treatment centers around the world, questions about transference, countertransference, and resistance are still very much a part of professional discussions and the provision of patient care. Although forensic work occurs in a different setting, we believe that psychiatrists should feel comfortable using all the tools in the courtroom that they would ordinarily employ in clinical practice. In fact, that is

exactly what the court asks experts to do: use professional skills to explain things that the attorneys, judge, and jury members could not understand on their own. Therefore, unconditionally supporting a polarized view of the defendant or disavowing certain professional skills (such as psychodynamic formulation) to cater to the courts diminishes our credibility and expertise.

Finally, without an appreciation of psychodynamic principles, the forensic psychiatrist may miss an explanation of a defendant's behavior that could have a substantial impact on the legal proceeding. For example, a psychiatrist may be asked to opine about a case in which a seasoned, high-ranking police detective was caught engaging in the very type of criminal behavior (i.e., gambling or consorting with prostitutes) that he had spent his lifetime trying to eradicate. Accusations of hypocrisy typically surround such cases, and some may even jump to the conclusion that the defendant is a psychopath. The psychiatrist can play an important role in humanizing the defendant in such cases, explaining the behavior in terms of reaction formation and its eventual breakdown. The narrative of good-cop-gone-bad may alternatively be explained as an individual struggling with a certain impulse, choosing a career based on unconscious defense mechanisms, and continuing to behave normally until those defenses broke down. Without the psychiatrist's input, such a formulation, which is undoubtedly less vilifying than the alternative, is likely to be missed.

To be clear, we are not advocating a return to psychodynamic formulation at the expense of all other methods of psychiatric assessment. We are also not advocating that psychiatrists who have no familiarity with psychoanalytic theory should begin waxing eloquent about unconscious processes in forensic reports at the first opportunity. We simply believe that thinking through the possible unconscious forces at play in a forensic case adds a layer of richness that would otherwise be lost. We understand that the psychodynamic formulation can never serve as a substitute for the other components of a thorough forensic evaluation (psychological testing, contact with collateral sources, and standardized assessment tools, when appropriate), but it would be a mistake to leave it out altogether.

We have outlined several reasons for the continued use of psychodynamic thinking in forensic work, but we also recognize the impossibility (at least in

many parts of the United States) of bringing raw psychodynamic formulations into the courtroom. Such formulations often rely on professional jargon, and they are likely to be met with skepticism from juries and attorneys when presented as an irrefutable explanation of criminal behavior. Therefore, the forensic psychiatrist, in contrast to his nonforensic peers discussing a clinical case among colleagues, must translate the psychodynamic formulation into language that a lay audience can understand. In addition, he must present the formulation with humility and acknowledge its limitations, including its inability to be proven.

For example, in the first case discussion, it might be helpful for the psychiatrist to explain the concept of displacement to the jury in the same simple terms with which the idea is taught to psychiatry trainees: "A man has a bad day at work. He comes home and, without knowing why he's doing it, kicks his dog. His angry feelings at his boss are taken out on someone else." This lays the foundation for explaining how Mr. Carson, when feeling ashamed about events at work and angry at his mother, eventually acted out against his grandmother. Most jurors would understand the idea of displaced rage, as this notion (even the term displacement) has become common in popular culture.

Similarly, although the Oedipal aspects of the case are counterintuitive for most lay people, the jury might understand Mr. Carson's actions when explained as desire to demonstrate his power and potency through a concrete act after years of being humiliated by his mother. They might further understand Mr. Carson's disorganized attachment with his mother when it is explained that most intimate relationships between humans are ambivalent. "Have you ever heard a wife say about a husband, 'I love him, but sometimes, when he does x or y, I just want to kill him?'" Using simple language and analogies from common life can help to convey the meaning of the psychodynamic formulation to the jury, perhaps without ever using the words unconscious, Oedipal, or defensive. The members of the jury may still struggle to comprehend why Mr. Carson would act out in such an extreme way, and they may ultimately be unconvinced that the dynamic explanation makes Mr. Carson less culpable for his actions. However, they are likely to have a richer understanding of the criminal behavior and can take that into account when reaching their conclusions.

The second case example provides an opportunity to explain the criminal act itself, but it also provides an opportunity for the psychiatric expert to use psychodynamic ideas to help Mrs. Baker's attorneys to understand why she is buckling under the pressure of the trial. The forensic psychiatrist can help the defense team understand that Mrs. Baker has had a long-standing "internal adversarial process"¹⁴ (i.e., a fight between two competing aspects of her personality) that is now being externalized and amplified in the courtroom. The psychiatrist might explain:

Imagine your worst fears about yourself, the things you only acknowledge in your darkest, most private moments, being said in open court. And imagine how horrible it is to think of yourself as a monster, how badly, just to make it through each day, you would need to believe that you were ill and ignore any part of you that really wanted your baby dead. Then imagine the stress of watching it all play out in front of you, not knowing which side is going to win, which version of yourself the world will determine to be the true one.

The psychiatrist might even explain that, in the therapeutic setting, the goal would be to integrate the two sides of the patient, but the legal setting does not allow for this, insisting instead upon winners and losers (and therefore further increasing the tension felt by Mrs. Baker).

These two case examples illustrate the additional step necessary for forensic psychiatrists intent upon keeping psychodynamic theory as part of their practice: translating the dynamic formulation for legal settings. In many ways, this is no different from the skills already used to translate psychiatric principles in the courtroom. For example, forensic psychiatrists routinely explain to attorneys that the DSM is not to be read as a checklist or a statute. Similarly, we do not present psychopharmacology or neurobiology to a jury in the same manner as we would present them to colleagues. Translation of knowledge for a nonmedical audience is already an essential skill in forensic psychiatry; we merely highlight its particular importance in explaining psychodynamic formulations.

Conclusions

When forensic psychiatrists are invited into the courtroom to provide expertise, we are asked to contribute our best professional judgment to a complex and often tragic legal proceeding. In our view, that invitation brings with it an obligation to use all of our

professional skills, including psychodynamic formulation when appropriate. There should be no shame in using all of our knowledge, but we must also do our best to translate it to a nonpsychiatric audience and tolerate the anxiety that comes with doing so. The psychodynamic formulation may not always end up being the most useful one in a particular case (just as some psychotherapy cases lend themselves better to other therapeutic approaches), but it can be very helpful to consider psychodynamic factors along the way to reaching the ultimate conclusion. Doing any less would be a disservice to the court, whose struggles we have been invited to illuminate, and to our professional integrity.

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