

Forensic Examinees Asking Probing Questions

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At rural county jails, in the barren and noisy rooms in which we are permitted to conduct our forensic mental health interviews and evaluations, sometimes the role of questioner gets reversed. In these settings, we find ourselves pausing now and then, not only to let the talking and yelling outside the door subside, but also to attend to this transient shift in who is asking the questions.

After all, questioning in forensic assessments is a one-way street. We ask questions. The examinees answer them. We then follow up with more queries, some of which are interspersed with observation and comments. For men, and occasionally for women, who are awaiting trial for a serious offense to have asked us questions, especially really good ones, is atypical. Yet, their questions can be provocative and revealing.

The literature on asking questions in forensic examinations is all about examiners. A psycINFO search on the terms “forensic” and “questions” yielded over 3,100 hits, none of which was about examinee questions. When the additional search term “examinee” was inserted, the number of hits shrank to 29, with still no related citations.

Our purpose is to describe question-and-answer interactions with defendants, to discuss the related use of self-disclosure by examiners in response to direct questions, and to consider questioning by exam-

inees in the context of forensic assessments. We first discuss the problem of boundaries in forensic examinations between examinees and examiners and *vice versa*. Then we look at specific questions and our replies. Finally, we put together the overall content of those elements.

The Matter of Boundaries

One way to think about examinee inquiries and our responses is in terms of maintaining proper boundaries. The polar extremes of propriety are clear and unambiguous. At one extreme, an examinee may properly ask, “Are you licensed?” Or “What do you plan to tell my attorney?” Such questions unequivocally fall in the range of reasonable queries. We would hope that the answers would be “yes” and “everything,” respectively.

At the other extreme are questions that improperly cross boundaries. For example, an examinee might ask, “Have you ever been arrested,” or “How often have *you* used drugs or alcohol” (in the context of our exploring the examinee’s substance use). To these questions, a reply that declines to answer may be reasonably called for, perhaps responding, “For now I would like to focus on what actually happened with you” or “This evaluation is about you, not me, and the best use of our time will be for me to come to know you, and what has gone on with you as well as I can.” At the same time, one can consider such responses as opportunities to learn more about the examinee, perhaps replying, “Normally, I don’t answer personal questions about myself, but I’m curious about why you’re asking.”

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Between these poles are queries that the examiner has much leeway for answering; the boundary is not clear. Suppose the examinee asks, "How old are you?" Or asks, as has happened to us, "What kind of car do you drive?" Or one that is common for both of us, who were raised in the Northeast but conduct evaluations in the Deep South, "I can tell you're not from around here. Where are you from?" We see no cogent reason to evade such questions, although the context and nature of the examination must always be taken into account. If we answer New Hampshire (S.B.) or New Jersey (R.dL.), it seems harmless, but individual examiners have different thresholds for such self-disclosure.

Minimal if any research has evaluated examinee questioning of their examiners. However, examiners' responses to difficult questions have been analyzed in the context of courtroom testimony. For example, Gutheil *et al.*¹ surveyed professionals regarding the appropriateness of various questions during cross-examination. Their findings revealed little consensus, other than supporting what we have also argued, which is that boundaries are clearer at the extremes. The authors reported that questions regarding the amount of money a forensic evaluator earns for an evaluation were seen as highly relevant. However, questions regarding an expert's substance use or details of a divorce were deemed too personal. Answers to questions between these poles received mixed responses in the survey, with some professionals, for example, seeing questions about religious beliefs as appropriate, whereas others strongly disagreed.

A related question during the examination that falls in the middle ground is one intended to elicit the evaluator's forensic opinion. In their discussion on this subject, Miller and Germain² addressed the process in which the examiner will "go over the opinion with the person at the time of the evaluation to allow him/her the opportunity to understand what will be said in court . . ." (Ref. 2, p 54). After ensuring that the examinee's individual circumstances are considered, Miller and Germain concluded that, "where it appears that no harm would ensue from disclosure and the opportunity for the patient to more fully understand the opinions and their bases, forensic clinicians strongly consider discussing with patients as much of their opinion and reasoning as possible" (Ref. 2, p 59).

A final observation on boundaries is that extended questioning by examinees can prolong the time and

interfere with the tasks necessary to complete the forensic examination. Too many examinee questions and detailed examiner answers can fill the available time with content that quickly reaches the point of diminishing returns.

The Examinee's Perspective

Few examinees become questioners. Most of the people we evaluate assume a relatively passive role, even when initiating topics and making inquiries. However, they are not necessarily passive in the forensic interview. Some persons avidly pursue their case and interests. Others are detached and uninvolved. Some give brief, cryptic, unhelpful replies, and still others overtalk and overstate, but almost all primarily assume the role of answering questions.

When examinees shift to asking questions, an interesting change in interpersonal dynamics occurs. The examinee often feels in control. By asking questions, the examinee may attempt to direct the narrative flow. We see four interpretations of such active queries by the examinee:

The distraction technique. The examinee engages in a sleight of hand in which he attempts to deflect the topic away from himself.

The manipulative technique. The examinee tries to disrupt the evaluation by asking the examiner questions that will cause discomfort.

The challenging and assertive approach. The examinee may take a more assertive stance by asking questions that are intended to evaluate the examiner.

Efforts to connect. Examiners are strangers who are usually acting under court order or other legal authority. By asking personal questions, the examinee may seek to make a personal connection, perhaps to come to know the examiner as a human being or as a person with whom he feels comfortable in divulging personal details and history.

What Examiners May Gain

It is possible to think of examinee questions as a vehicle for understanding the dynamics, personality patterns, and possible psychopathology of the defendant or plaintiff. Assume the examinee has asked you these questions, which are similar to ones that we have been asked ourselves:

Reflections and Narratives

Table 1 Examples of Three Types of Optional Answers to Examinee Questions

Question	Appropriately Self-disclosing	Respectful Deflection	Asking Questions About the Questions
Are you getting worn out the way I am from all this?	Yes, I am. We have been talking for over three hours, and I am a little worn down.	We have covered a lot of things, but I hope you will bear with me as we stay with this.	Can you tell me how you are getting worn out and what effect this might be having as we work together today?
They pulled me out of my cell quickly and I did not have time to wash. I know I have body odor. Have you noticed it?	Yes, I have, but I have been paying attention to what you say and what you think, and that is what is important to me.	I know it is what happens in jails.	I'm curious what it would mean to you if I did notice your body odor.
Do you think I made a mistake putting this tattoo on my face?	I honestly don't know if it was a mistake. Some people will react negatively to it.	Lots of people have tattoos nowadays.	What would it mean for you if I had a positive or negative reaction to your tattoo?
Was that your stomach rumbling?	Yes. Sorry about that. My stomach makes noises when I am hungry.	I have been paying close attention to what you were saying.	And if it was?

These are combinations of questions asked by different examinees or questions changed to protect the identities of the examinees.

Do you think I am a good person?

Do you think I am telling the truth?

Am I somebody you would trust to babysit your children?

Do I have a dissociative disorder?

Did the time I was in a coma in the hospital after the auto accident damage my brain?

All of these queries are examinee-centric. Because the examination is about the examinee, there is an apparent element of relevance. The type of question and particular nature of it may help in understanding how the person is thinking. The examinee's subsequent responses may also be of help in using questions as a means of gaining knowledge. Furthermore, the examiner can always ask, "What are your own thoughts about whether you are a good person?"

At the same time, a flurry of "about-me" questions may well hint at a narcissistic quality. Although these types of questions may not always be useful in engaging the person further, we see them as potentially useful in telling us something about the examinee.

Questions may also relate to relevant topics that are not specifically about the examinee. For example, questions may be about the allegations or anticipated trial process or about the retained or appointed attorneys. Still other questions may address what the examiner has done so far in the assessment. We often view these questions as appropriate ones that should be answered, similar to the question regarding the

examiner's credentials. However, it is important not to overstep our realm of competence by attempting to answer questions about allegations or the trial process. An answer as simple as, "I don't know exactly what will happen," may suffice.

One more category is personal questioning of the examiner, which may be uncomfortable for some examiners and a revealing challenge for others, in the sense that the query may coerce examiners for the first time to think through specific and sensitive aspects of self-disclosure during forensic interviews. Personal questions will be considered separately next. In addition, there may be provocative questions about the examiner's physical appearance, with associated compliments and criticisms, as well as questions that are meaningless small talk.

Personal Questions and Self-Disclosure

In Table 1, we report some questions that we have been asked and replies that we see as acceptable. These replies are offered with the understanding that empirical data or unanimity do not exist to support these clinically subjective possibilities. Three options for responding are presented in reply to each question.

Our Experiences With Examinee Questions

As with those questions and answers, we have assembled pieces of questions from multiple examina-

tions and changed the content sufficiently to ensure that the defendants cannot be identified. For the purposes of narrative flow, we present these questions and answers as if they occurred during a single examination.

The examinee asked us whether we were religious, to which one of us answered that she used to be, but has become less so, while the other examiner said, “a little.” Then, with focused intensity the examinee asked, “Do you accept the Bible as the literal and revealed word of our Lord Jesus Christ?” Our reply was that that was a question for pastors and theologians, way beyond what we would get into today. The examinee seemed satisfied.

He posed his next question, “Is it right that they should arrest and keep innocent people in jail?” and leaned back with his arms crossed. One of us said “no” with a brief follow-up as to why. The other examiner gave a brief response, noting the imperfections of our justice system. The examinee then asked if we could stop other inmates at the jail from taunting him and picking on him. Our reply was that we would pass the request on to his attorney, but that we were just visitors to the jail.

The examinee next asked what we thought was wrong with him. We were still in the middle of the assessment and it was not clear that there would be any useful payoff in giving such feedback at that point. We said we did not know at this time. He followed with a question about whether we thought he was the kind of person who would kill somebody on purpose. We knew he had a history of violence before the present allegation of murder, but we also had had a positive interaction with him in the earlier part of the assessment. We responded, probably not, based on what we had learned so far that day.

The experiences of being asked questions have stayed with us sufficiently that we have found ourselves wondering what else we might do to elicit and manage probing questions from the people we evaluate. Our examinees often revealed a lot by asking questions, rather than by just answering them. Some questions showed thought and curiosity. They were challenging and relevant. These were qualities that may not have been readily apparent to us had the examinees simply answered questions. Their ques-

tions illuminated certain aspects of their beliefs as well. For example, questions about religion addressed those persons’ belief systems and ways in which examinees may present themselves. As they are or, ideally, how they should live their lives.

Questions That Tap Examiner Vulnerabilities

Let us raise the possibility that examinees may ask questions that go quickly and unexpectedly to the essence of a special vulnerability in the examiner. It may have to do with a traumatic experience that continues to have a skinned-knee sensitivity. For some people, it may be the history of a sexual or physical attack. Or take the case of the adolescent experience of one of us (S.B.) whose father passed away after a long battle with an ill-treated cancer. To this day, movies and books that present dying and deaths of fathers bring him a rush of tears and distress, most recently in the comedic film *Trainwreck*. In any of these cases, we would hope the examiner would be able to manage such vulnerabilities professionally, using any of the three kinds of replies we have outlined in Table 1. We do not know, but we think it would be good to find out.

Some caveats are in order in this broad discussion of examinee questions. It is not customary for examinees to become questioners. Many do not have the personal resources or frame of reference to do so. It is not clear that this is necessarily a high-payoff activity for mental health professionals. With these cautions in mind, our sense is that such interchanges are good for us. They keep us on our toes. They change the dynamics of the assessment, at least momentarily. Most important, they have the potential of uncovering the phenomenological view of the examinee. We like the challenge. We hope to encounter it more often.

References

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