

# Thoughtful Forensic Practice Combats Structural Racism

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In the last year, medical organizations of all types have been declaring their opposition to structural racism.<sup>1,2</sup> This has been catalyzed by the national conversation about race and the devastating deaths in police custody that reinvigorated it. Besides the general affirmations, medical leaders have been seeking specific ways to concretize their opposition to racism. For them, as for others, questions persist about the behaviors that should oppose racism in everyday work. The *American Journal of Psychiatry*, for example, recently published an editors' note emphasizing the *Journal's* commitment to combatting racism, social injustice, and health care inequities.<sup>3</sup> This statement of intent included the recognition that previous efforts had fallen well short of improving discrimination in health care.

We now hear that forensic psychiatrists are discussing anew what it means to oppose structured racism in their professional activity and how to work at mitigating its effects. Does the commitment to oppose racism change our professional practice? Does it lead us away from traditional ethics-based forensic work?

We are not surprised by this new discourse about our professional roles. In forensic practice we have long had a front-row seat at the repetitive cycle of

oppression and protest. Our skills of assessment, report-writing, and testimony become increasingly relevant as politics, violence, and mental health converge to seek resolution in the courts. We are also keenly aware that defendants and plaintiffs of color are regularly disadvantaged in those courts. These currents have now merged into a national demand for accountability in a maelstrom of race, justice, and health.

We seize this opportunity to make clear that many already seek daily manifestations of anti-racism. This profound concern has accounted for persistent calls for fairness and justice in a recent literature that resonates across class, race, gender, and ethnicity.<sup>4-7</sup> There is also a new turn in our field, captured and explicated, for example, by Martinez,<sup>8</sup> Norko,<sup>9</sup> and Buchanan.<sup>10</sup> They imagine forensic psychiatry as a moral enterprise, even a spiritual practice, characterized by values like compassion, dignity, and attention to narrative. The stories of traditionally oppressed groups matter in a judicial system that differentiates by race and wealth.<sup>11</sup> Indeed, systemic fairness cannot take hold under centuries of assumptions favoring Euro-centric, male, and heterosexual archetypes.<sup>12,13</sup> These influences require specific action so that the advantages gained by lotteries of birth and positionality do not harden into a complicity with unjust health care and economic and judicial systems.

## Forensic Work That Combats Injustice

### The Narrative

We remind forensic professionals that there are models available to guide us in our daily work. The habits and skills of the ethical practitioner, for

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example, call for sensitivity to vulnerable evaluatees.<sup>14</sup> Recognizing the social, cultural, economic, and institutional disadvantages of those more likely to be arrested and imprisoned is a legitimate starting point. Assessments, reports, and testimony can subsequently describe the defendant's narrative in a way that accounts for the individual's life events and the community history that shapes them.<sup>15</sup> The use of language in reports and testimony is a recognizable element of the profession's rhetorical engagement in persuasive argumentation.<sup>16,17</sup> Reports follow a certain structure from their introduction and sources of information to observations and the conclusions that follow. There is a kind of exposition, an introduction of critical information, that guides the reader toward a logical and substantiated conclusion. We choose the critical information that shapes the conclusion.

Communications scholar Kristin Langellier has emphasized that narrative can be particularly useful in presenting stories of "socially marginal, disparaged, or ignored groups or for individuals with 'spoiled identities'" (Ref. 17, p 134). Thus, forensic professionals can be called upon to support evaluatees as they articulate life stories affected by damaging elements like poverty, traumatic experiences, discrimination, and chronic illness.

### **Truth in Context**

Telling the truth about evaluatees in context is an established skill that accounts for power differentials in the defendant's life, just as in the forensic interaction. Informed consent and the cultural formulation are traditional tools that account for differences in identity, power, and context for professional and evaluatee alike. Reminding the defendant of the evaluator's role and conducting a culturally sensitive interview, however, are not merely tools for framing and contextualizing an individual narrative. These techniques demonstrate respect for the dignity of those who have not fared well in the usual social expressions of truth and justice.<sup>6</sup> Griffith<sup>18</sup> has recently reframed this concept as a matter not only of respecting dignity, but also of caring in forensic psychiatry. If we utilize empathy and respect for the dignity of evaluatees, he writes, we care for them. We avoid traumatizing people in our interactions and validate their worth as human beings.

### **Bias**

A specific way to contextualize forensic information for any evaluatee is to minimize the harm created by a prejudicial history. A past psychiatric history, for example, can be framed in a way that creates bias in one direction or another. Past arrests, substance use, or sexual behavior can be particularly inflammatory.<sup>15</sup> Where such history feeds the bias of the community and does not clarify the legal question, it calls for judicious treatment. The remoteness of past arrests becomes as critical to the story as the length of recovery from substance use.

Peter Brooks urges actors in the legal enterprise to avoid the kind of bias that affects many social institutions.<sup>19</sup> He reminds us of the possible pitfalls of narrative presentations: omissions, distortions, rearrangements, and rationalizations. Brooks has suggested that one way to deal with the bias that comes with story-telling is to focus on its narrative relevance. How do the accounts relate to the fundamental reports of those we evaluate? How does the narrative connect the individual to the forensic question? Although Brooks notes that we cannot completely avoid the pitfalls, we nonetheless can reflect and strive to overcome them as we go about our work. We are more likely to be successful if we add the values of minimizing harm and bias to habits and skills of judicious rhetoric and sensitive use of language. This augmentation allows us to resist being affected by our bias even as we combat the bias of social institutions.

Tied directly to thoroughness, a skill recommended for cases that provoke known bias or controversy,<sup>20</sup> interview and report techniques that acknowledge the vulnerable person's perspective enrich the forensic examination. Collateral information is a time-honored validation for the many cases influenced by a lack of opportunity, economic stability, and community resources. Consequently, thoroughness provides a strong measure of collective protection, not only against cross-examination, but against structural bias and cultural insensitivity as well.

Recognizing one's implicit bias creates a more realistic assessment of the vulnerable individual. Educational interventions that raise awareness or frame known biases in a new way are often sufficient to alter professional behavior.<sup>21-23</sup> Advances in anti-ageism, for example, where pre-evaluation scripts and educational interventions overcome clinician

bias, bode well for efforts against racism. The American Medical Association and the American Bar Association are among those recommending use of implicit bias assessment tools for practitioners eager to examine their own beliefs.<sup>24,25</sup>

## Conclusion

There are limits to the efforts that forensic professionals can make, even to overcome injustice. We ourselves resist the temptation to bend the evidence to help a client, for example, favoring instead advocacy for one's opinion that resists the influences of the adversarial system. Our forensic colleagues once wrote that the truth must be protected from attorneys on both sides.<sup>26</sup> We, however, envision an approach that simply reports the narrative that matches established societal inequities. Is the defendant from a distressed neighborhood, where there are no mentors, community centers, or grocery stores? Has mass incarceration affected the defendant's family and upbringing like so many others? This is what opposes systemic racism: the emphasis of social and personal perspectives that bring it into stark relief. Ultimately, a culturally sensitive narrative can and should be a part of every analysis.

Between the extremes of bending the evidence and complicity with unjust systems lie all the potential linguistic and rhetorical skills that make forensic work persuasive. For those of us who see a combination of personal, community, and professional influences on forensic practice, use of the community's story-telling knowledge is a definitive way to contextualize the individual's predicament. It acknowledges the voices of the evaluatee, the expert, and the community in a manner that examines cases from all the traditionally neglected angles: from the non-dominant perspective, through the lens of implicit bias, and in the historical context.

At the inception of the narrative movement in medicine, ethicist Tod Chambers alerted his contemporaries that discourse itself is "constructed," a form of rhetoric that supports a viewpoint.<sup>27</sup> Chambers joined philosopher Thomas Nagel and others in recognizing that there was no "view from nowhere."<sup>28</sup> Medicine and psychiatry already adopt this perspective in documenting clinical visits, consultations, and initial assessments. Practitioners write clinical notes to draw the reader toward a conclusion, describing pertinent positives and negatives in a test of hypotheses for diagnosis and treatment.

Following Chambers, forensic psychiatrists can see this just as our colleagues in philosophy, economics, history, and ethics do: using language and self-examination critically, minimizing harm and bias, and grounding the personal narrative in its historical context to combat the daily inequities of an unjust system.

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