



Psychiatry & Behavioral Sciences Section – 2005

I15 Ethical Consideration in Working with the Capital Murder Defendants: Perspective from the Defense Lawyer, Forensic Evaluator, and the Bench

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After attending this presentation, attendees will understand the ethical ramifications and pitfalls of working as an expert witness in a capital murder case, and will understand the nature of working collaboratively with a defense attorney as a mental health expert (sometimes both parties have competing agendas).

This presentation will impact the forensic community and/or humanity by proving to be a fascinating presentation and discussion about death penalties cases and the challenges of working with defendants who may be fully invested in using the State as a proxy for their own death.

The goal of this presentation is to present to the forensic community through case example the complex considerations and dynamics between defense attorney and expert witness, in this case, a forensic psychologist hired by the defense attorney

This presentation will begin with a description of an actual legal case; a quadruple homicide perpetrated in Louisiana, a capital murder case with possible (and likely) death penalty implications. It is the case of familicide resulting in the death of 3 children and the female spouse, perpetrated by the biological father/husband. The defendant insisting that his legal defense attorney do everything possible to ensure that he gets a death penalty conviction makes legal representation difficult. That is, the defendant is fully committed to dying and wants the state to be his proxy for his own death. The defense attorney struggles with his mandate to defend his client while the defendant has no vested interest in his own defense. A defense expert, forensic psychologist, is called in to evaluate the defendant's competence to stand trial, mental state at the time of the alleged killings, and any other relevant mitigating factors. "What kind of a defendant would want no defense at all, possibly leading to the death penalty," the defense attorney asked; the defense attorney questioned his own client's adjudicative competence. From the outset, the forensic evaluator must be vigilant for signs of malingering. However, this kind of malingering is quite different from that normally encountered in ordinary forensic evaluations of criminal defendants. In this case, it is suspected that the defendant was purposefully "faking good," that is, trying to look "quite normal" so that a mental health defense (e.g., insanity) would not be a viable defense strategy. The insanity defense would keep him from dying, contrary to his wishes. Yet, the defendant also appeared to simultaneously present as "faking bad." That is, he appeared to exaggerate psychopathic characteristics so that he would look like a "cold blooded killer" making it more likely that the state would fulfill his stated aims, killing him by lethal injection.

The defendant begrudgingly agreed to a forensic psychological evaluation. When the evaluation was completed, the results were presented to the defense attorney who, upon great deliberation, decided not to use the defense expert's findings. Then another unusual set of circumstances arose posing difficult ethical issues for the forensic psychologist and a legal challenge for the defense attorney. Specifically, the prosecution insisted that since the state helped pay for the defense expert's evaluation (the defendant was seen as partially indigent), they were entitled to the defense expert's findings. The defense attorney argued against this citing "no legal precedent." However, the Judge ruled that the results of the evaluation should be handed over to the prosecution. The forensic psychologist consulted with colleagues, and then wrote a letter of protest to the defense attorney, which was forwarded to the judge. In turn, a whole new set of ethical issues emerged including limitations of confidentiality and privilege, and concerns about how such information (the forensic evaluator's findings) may be misused.

Following the case presentation from both a legal defense attorney's perspective and forensic psychologist (the defense expert witness), a panel discussion will ensue with an added view from the judiciary. The Honorable Leon Cannizzaro, Judge in the Louisiana Fourth Circuit of Appeal (with many years of experience on the bench in Orleans Parish as a criminal court judge) will facilitate a follow-up discussion with emphasis on Louisiana law, its uniqueness, and how a judge steers through a minefield of potential legal and ethical quandaries in a case such as this.

Ethics, Capital Murder, Forensic Psychological Evaluation