

**AMERICAN COLLEGE OF FORENSIC PSYCHOLOGY**

**ANNUAL MEETING**

**MARCH 28-MARCH 31, 2019**

**WESTGATE HOTEL, SAN DIEGO**

**ETHICAL PRACTICES IN FORENSIC PSYCHOLOGY**

**THURSDAY, MARCH 28**

**2:15-4:30**

**JERRY L. BRITAIN, Ph.D.**

**CLINICAL PSYCHOLOGIST**

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**THOSE WHO PLAN TO ATTEND THIS PRESENTATION ON ETHICS AND FORENSIC PRACTICE ARE ENCOURAGED TO BRING A COPY OF THE FOLLOWING THREE ARTICLES TO THE TALK:**

1. APA. (2002). Ethical principles of psychologists and code of conduct. American Psychologist, 57(12), 1060-1073.
2. APA. (2013). Specialty Guidelines for Forensic Psychology. American Psychologist, 68(1), 7-19.
3. Simon, R., & Shuman, D. (1999). Conducting forensic examinations on the road: Are you practicing your profession without a license? Journal of American Academy of Psychiatry and Law, 27(1), 75-82.

**PERMISSION TO REPRINT THIS ARTICLE GRANTED BY PUBLISHER.**

**ALSO HIGHLY RECOMMENDED READING: Herbert and Young. (2002). Tarasoff at Twenty-five. (see references).**

**MANY CANDLES MAKE FEW SHADOWS**

**VERY OLD, DUTCH HARLEM PROVERB**

QUOTED FROM "COMMENTS FROM (ACFP) MEMBERS OF THE COLLEGE"

"THE RANGE OF PROFESSIONAL SUBJECTS PRESENTED AT THE COLLEGE'S ANNUAL SYMPOSIUMS AND THOSE PUBLISHED IN THE COLLEGE'S AMERICAN JOURNAL OF FORENSIC PSYCHOLOGY, COVERS EVERY FORENSIC IOSSUE PSYCHOLOGISTS ARE ASKED TO ADDRESS. THE ANNUAL SYMPOSIUM NOT ONLY PROVIDE REQUIRED CONTINUING EDUCATION COURSES (I.E. LAW AND ETHICS) AND REFINEMENT OF EVERY FORENSIC PSYCHOLOGICAL PRACTICE SKILL, BUT OFTEN *PROVIDE INFORMATION YOU DIDN'T EVEN KNOW YOU NEEDED UNTIL YOU HEARD IT*".

ROBERT L. HALON, Ph.D.

SAN LUIS OBISPO, CALIFORNIA

CITED WITH PERMISSION OF AUTHOR

**GENERAL QUESTIONS AND THOUGHTS**

**WHAT IS UNIQUE ABOUT FORENSICS AND FORENSIC WORK?**

**WHAT IS THE DIFFERENCE BETWEEN PSYCHIATRY AND PSYCHOLOGY IN WHEN A PATIENT CEASES BECOMING A PATIENT?**

**WHAT IS THE DIFFERENCE BETWEEN PSYCHIATRY MALPRACTICE INSURANCE AND PSYCHOLOGY MALPRACTICE WHEN A CLINICIAN IS ACCUSED OF SEXUAL MISBEHAVIOR?**

**NORMALLY, PSYCHOLOGISTS DO NOT DO AN EVALUATION OR RENDER A REPORT ON SOMEONE WHOM THEY HAVE NOT SEEN AND EVALUATED. THERE ARE 2 POSSIBLE EXCEPTIONS. WHAT ARE THEY, AND IF DONE, WHAT SHOULD A FORENSIC EXAMINER DO IN THOSE TWO EXCEPTIONS?**

**WHAT DOES THE APA ETHICS CODE, 2002, SAY ABOUT FORENSIC PRACTICE?**

**WHAT DOES THE APA SPECIALITY GUIDELINES FOR FORENSICS (2013) ADD TO THESE 2002 GUIDELINES?**

CAUTIONARY STATEMENT FOR FORENSIC USE OF DSM-5

***“ALTHOUGH THE DSM-5 DIAGNOSTIC CRITERIA AND TEXT ARE PRIMARILY DESIGNED TO ASSIST CLINICIANS IN CONDUCTING CLINICAL ASSESSMENT, CASE FORMULATION, AND TREATMENT PLANNING, DSM-5 IS ALSO USED AS A REFERENCE FOR THE COURTS AND ATTORNEYS IN ASSESSING THE FORENSIC CONSEQUENCES OF MENTAL DISORDERS. AS A RESULT, IT IS IMPORTANT TO NOTE THAT THE DEFINITION OF MENTAL DISORDER INCLUDED IN DSM-5 WAS DEVELOPED TO MEET THE NEEDS OF CLINICIANS, PUBLIC HEALTH PROFESSIONALS, AND RESEARCH INVESTIGATORS RATHER THAN ALL OF THE TECHNICAL NEEDS OF THE COURTS AND LEGAL PROFESSIONALS”.***

***HOWEVER, THE USE OF DSM-5 SHOULD BE INFORMED BY AN AWARENESS OF THE RISKS AND LIMITATIONS OF ITS USE IN FORENSIC SETTINGS. WHEN DSM-5 CATEGORIES, CRITERIA, AND TEXTUAL DESCRIPTIONS ARE EMPLOYED FOR FORENSIC SETTINGS, THERE IS A RISK THAT DIAGNOSTIC INFORMATION WILL BE MISUSED OR MISUNDERSTOOD. THESE DANGERS ARISE BECAUSE OF THE IMPERFECT FIT BETWEEN THE QUESTIONS OF ULTIMATE CONCERN TO THE LAW AND THE INFORMATION CONTAINED IN A CLINICAL DIAGNOSIS”.***

**DSM-5, page 25.**

**APA CITATION ON USE OF CASES AND PROTECTION OF CONFIDENTIALITY**

**ALL OF THE FOLLOWING CASE VIGNETTES ARE DISGUISED, IAW ETHICAL PRINCIPLE 8.04, USE OF CASE MATERIALS IN TEACHING, CONTINUING EDUCATION, AND OTHER SCHOLARLY ACTIVITIES.**

**“FORENSIC PRACTITIONERS USING CASE MATERIALS FOR PURPOSES OF TEACHING, TRAINING, OR RESEARCH STRIVE TO PRESENT SUCH INFORMATION IN A FAIR, BALANCED, AND RESPECTFUL MANNER. THEY ATTEMPT TO PROTECT THE PRIVACY OF PERSONS BY DISGUIISING THE CONFIDENTIAL, PERSONALLY IDENTIFIABLE INFORMATION OF ALL PERSONS...”**

**CASES WHICH ARE PRESENTED, ARE DISGUISED, OFTEN WITH A BLENDING OF TWO OR MORE CASES. FICTIONAL ELEMENTS ARE ADDED, IN A FURTHER EFFORT TO DISGUISE THE IDENTITY OR IDENTITIES OF THOSE INVOLVED. WHILE EACH CASE IS “DISGUISED”, THE ETHICAL DILEMMA, OR CONFLICT AT HEART, IS NOT. EVERY EFFORT IS MADE TO PROTECT THE ANONOMY OF THOSE DESCRIBED. IN CASES WHERE THE FACTS ARE A MATTER OF PUBLIC RECORD, THAT IS NOTED, ALSO.**

**ANY SIMILARITY TO AN IDENTIFIABLE OR REAL CASE IS PURELY ACCIDENTAL, IT IS UNINTENDED, AND SHOULD NOT BE TAKEN AS REPRESENTING A CASE WITH KNOWN OR IDENTIFIABLE INDIVIDUALS.**

**CASES WHERE NAMES ARE GIVEN ARE DONE SO AS THE INFORMATION PRESENTED IS IN THE PUBLIC DOMAIN.**

## CONFIDENTIALITY

**WHAT ARE SEVEN TIMES WHEN CONFIDENTIALITY IS WAIVED, NOT GIVEN, OR NOT ASSUMED?**

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

**WHAT DOES THE APA ETHICS CODE SAY ABOUT THE ISSUE OF CONFIDENTIALITY?**



## DUTY TO WARN

Tarasoff v. Regents of the University of California, a 1976 case

Nasser v. Parker, 1995, a Virginia case

Gregory v. Kilbride, 2002, a North Carolina Case

Volk v. Demeerleer, 2016, a Washington State Case

WHAT WERE THE THREE WORDS UTTERED IN THE CALIFORNIA SUPREME COURT 1974 CASE?

WHAT WERE THE THREE WORDS THAT SUMMED UP THE CALIFORNIA SUPREME COURT 1976 CASE?

ARE ALL STATES TARASOFF OR DUTY TO WARN STATES?

IF A STATE IS NOT A DUTY TO WARN STATE, OR TARASOFF STATE, WHAT DOES THE APA ETHICS CODE SAY A CLINICIAN MAY DO?

IF SOMEONE PRACTICES IN A TARASOFF STATE, WHILE THERE ARE SOME DIFFERENCES, WHAT ARE THE FOUR "PRONGS" GENERALLY USED IN DECIDING WHETHER OR NOT TO DO A TARASOFF INTERVENTION?

IF A CLINICIAN DOES A TARASOFF INTERVENTION, MUST HE/SHE TELL THE CLIENT WHO MADE THE THREAT?

## CASE EXAMPLES

### CASE #1

#### CASE OF THE PSYCHOLOGIST WHO WAS THREATENED

DR. ORANGE IS AN EARLY CAREER PSYCHOLOGIST. SHE QUICKLY ESTABLISHES HERSELF AS A WELCOME RESOURCE IN A SMALL, RURAL COMMUNITY, WITH FEW MENTAL HEALTH RESOURCES. AS A FEMALE THERAPIST, SHE BEGINS TO QUICKLY HAVE MORE AND MORE WOMEN WHO SEEK PSYCHOTHERAPY SERVICES WITH HER.

ONE CASE, IN PARTICULAR, BEGINS TO PRESENT PROBLEMS FOR HER. DR. ORANGE IS SEEING A WOMAN, MRS. I, WHO IS IN A DYSFUNCTIONAL MARRIAGE. DR. ORANGE SUSPECTS ABUSE, BUT IS VERY CAREFUL TO NOT BROACH THE SUBJECT TOO QUICKLY. AS THE THERAPY PROGRESSES, IT BECOMES CLEAR THAT THERE IS, INDEED, EMOTIONAL, AND PHYSICAL ABUSE. THE ABUSE THEN BECOMES THE FOCUS OF THE ONGOING THERAPY.

ONE MORNING, DR. ORANGE RECEIVES A PHONE CALL. IT IS FROM THE HUSBAND OF MRS. I. HE SAYS HE IS UNHAPPY WITH HIS WIFE SEEING THIS THERAPIST, AND ACCUSES DR. ORANGE OF "FILLING HIS WIFE'S HEAD WITH JUNK". DR. ORANGE APPROPRIATELY SAYS THAT SHE CANNOT COMMENT ON THIS OR ANY OTHER CASE, WITHOUT WRITTEN CONSENT. MR. I SAYS HE KNOWS HIS WIFE IS IN THERAPY BECAUSE HE PAYS THE INSURANCE CO-PAY. HE THEN HANGS UP THE PHONE.

IN THE NEXT WEEKS, MR. I CALLS AGAIN, EACH TIME BECOMING MORE AND MORE IRATE AND MENACING. EACH TIME HE ENDS UP HANGING UP THE PHONE. DR. ORANGE DOCUMENTS THESE TELEPHONE CALLS, AND RAISES THEM IN SUBSEQUENT THERAPY SESSIONS WITH MRS. I.

NEXT, MR. I CALLS AND THREATENS PHYSICAL HARM TO DR. ORANGE AND HER FAMILY IF SHE DOES NOT STOP SEEING HIS WIFE.

WHAT SHOULD DR. ORANGE DO? WHAT SHOULD SHE NOT DO? WHY? WHY NOT?

WHAT GUIDANCE DOES THE APA ETHICS DOES GIVE IN THIS SITUATION?

**THE MENDENEZ BROTHERS MURDER TRIAL**

**THE MENDENEZ BROTHERS, LYLE (20 YO AT THE TIME OF THE MURDER) AND ERIC (18 AT THE TIME OF MURDER) WERE ARRESTED AND CHARGED FOR THE MURDER OF THEIR PARENTS IN AUGUST OF 1989. EACH SEPARATE TRIAL ENDED UP IN A MISTRIAL (1993).**

**THEY WERE RETRIED, IN 1996, THIS TIME TOGETHER. THIS TIME THEY WERE CONVICTED.**

**WHAT HAPPENED IN THIS IMPORTANT CRIMINAL TRIAL, CONDUCT BY A "TREATING PSYCHOLOGIST", THAT THE APA ETHICS CODE OF 2002 WAS AMENDED TO ADDRESS? WHAT WAS THAT NEW ADDITION?**

CASE: BENNY ARNOLD

BEN E. ARNOLD IS ARRESTED FOR STEALING CLASSIFIED INFORMATION AND INDUSTRIAL SECRETS. HIS ATTORNEY HIRES A DEFENSE TEAM TO DO A FORENSIC PSYCHOLOGY EXAMINATION.

THE "GOVERNMENT" (I.E. PROSECUTION) DECIDES TO HIRE THEIR OWN FORENSIC PSYCHOLOGIST. THEY HIRE DR. GREEN. DR. GREEN REVIEWS ALL AVAILABLE RECORDS, INCLUDING CHARGE SHEETS, AND THE COMPLETE EVALUATION BY THE DEFENSE PSYCHOLOGY EXPERT.

DR. GREEN, A PROSECUTION EXPERT THEN MAKES ARRANGEMENTS TO MEET MR. ARNOLD. HE CLEARS THIS MEETING WITH THE DEFENSE ATTORNEY, AND NOTIFIES THE PROSECUTOR OF THE MEETING DATE.

DR. GREEN THEN MEETS WITH MR. ARNOLD. HE SHOWS HIM IDENTIFICATION, IDENTIFIES HIMSELF AS A FORENSIC PSYCHOLOGIST, AND TELLS MR. ARNOLD THAT HE (DR. GREEN) IS WORKING FOR THE PROSECUTOR IN THIS CASE. HE EXPLAINS THAT HE WILL BE ASKING HIS QUESTIONS, WHICH MAY, OR MAY NOT, BE DIFFERENT FROM THOSE THE DEFENSE ATTORNEY EXPERT DID. HE ALSO EXPLAINS THE USE OF THE INFORMATION HE WILL TAKE. MUCH TO DR. GREEN'S SURPRISE, MR. ARNOLD ANSWERS ALL QUESTIONS, APPARENTLY HONESTLY, ADMITTING HE STOLE THE DATA FOR WHICH HE WAS CHARGED. DR. GREEN MEETS WITH MR. ARNOLD, SEVERAL MORE TIMES, EACH TIME, BEING SURPRISED AT THE APPARENT CANDOR MR. ARNOLD SHOWS.

DR. GREEN THEN WRITES A RATHER LENGTHY REPORT, SUBMITS IT TO THE PROSECUTION LAWYER, AND PREPARES FOR TRIAL.

AT TRIAL, THE JUDGE BEGINS QUESTIONNING DR. GREEN. THE JUDGE BECOMES ANGRY, AND NOT ONLY THROWS OUT DR. GREEN'S ENTIRE REPORT, BUT SUMMARILY DISMISSES ALL CHARGES AGAINST MR. ARNOLD.

WHAT, IF ANYTHING, HAPPENED, AND WHAT, IF ANYTHING, DID DR. GREEN FAIL TO DO? HOW MIGHT HE HAVE PREVENTED THIS MISSTEP FROM HAPPENING?

WHAT APA ETHICAL CODE MIGHT DR. GREEN NOT FOLLOWED?

**CASE #2: CASE OF THE PSYCHIATRIST AND THE MMPI**

**DR. STUBEN (A PSYCHOLOGIST) IS APPROACHED BY A DEFENSE ATTORNEY AND ASKED TO REVIEW A FORENSIC EVALUATION DONE BY A FORENSIC PSYCHIATRIST, DR. GREEN.**

**DR. STUBEN QUICKLY NOTICES A NUMBER OF CONCERNS. THEY INCLUDE:**

**ALMOST CERTAINLY, THE MMPI IS INVALID, SINCE THE MAN WAS IN SPECIAL EDUCATION, ALL OF HIS PUBLIC SCHOOL YEARS, AND COULD NOT READ EVEN SIMPLE SENTENCES WHEN DR. STUBEN SAW HIM. (READING LEVEL FOR LATEST MMPI IS 8<sup>TH</sup> GRADE, UNLIKE EARLIER VERSIONS).**

**THIS MAN WAS PROBABLY IN THE MILDLY MENTALLY RETARDED RANGE OF IQ. DR. GREEN DID NOT ADMINISTER A WAIS, NOT DID HE EVEN MENTION THIS POSSIBILITY IN HIS REPORT.**

**DR. GREEN DIAGNOSED THE MAN WITH MALINGERING, DESPITE WHAT APPEARED TO BE A GROSSLY INCOMPLETE INTERVIEW AND EXAMINATION. OF MUCH CONCERN TO DR. STUBEN WAS THAT HISTORICAL RECORDS, INCLUDING ACADEMIC RECORDS WERE NOT REQUESTED, NOR WERE THEY REVIEWED IN REACHING DR. GREEN'S CONCLUSIONS.**

**DR. GREEN ALSO USED A COMPUTERIZED SCORING PROGRAM FOR THE MMPI. HIS REPORT WAS SIMPLY A "CUT AND PASTE" TAKEN FROM THIS COMPUTERIZED SCORING PROGRAM.**

**DR. STUBEN WAS ALSO DISMAYED THAT NOT ONLY WAS THE MMPI COMPUTER SCORED, AND INTERPRETED, NO MENTION OF THIS WAS MADE IN HIS LENGTHY REPORT.**

**AT DR. STUBEN'S REQUEST, THE DEFENSE ATTORNEY DID A DEPOSITION IN WHICH HE ASKED WHAT MADE HIM (DR. GREEN) COMPETENT TO ADMINISTER AND SCORE THE MMPI. DR. GREEN SAID "THEY SOLD ME THE PROGRAM AND I HAD A WORKSHOP IN IT".**

**CASE #4: CASE OF DIVORCE ATTORNEY DEMANDING TREATMENT RECORDS**

**DR. ADLER IS A CHARLOTTE, N.C., PSYCHOLOGIST, AND HAS BEEN IN ACTIVE PRACTICE FOR MANY YEARS. HE IS WELL THOUGHT OF IN HIS PROFESSIONAL COMMUNITY.**

**DR. ADLER HAS BEEN SEEING A 54 YEAR OLD MAN, MR. PAYNE, WHO IS GOING THRU A VERY PAINFUL AND ACRIMONOUS DIVORCE. THE THERAPY IS MAINLY SUPPORTIVE, AND MR. PAYNE, FAITHFULLY ATTENDS EACH SCHEDULED APPOINTMENT.**

**WITH NO NOTICE, DR. ADLER RECEIVES A SUBPOENA FOR THE TREATMENT RECORDS FOR THE THERAPY WITH MR. PAYNE. AS HE SHOULD DO, DR. ADLER DISCUSSES THIS IN THEIR NEXT SESSION, AND TOGETHER THEY DECIDE ON A PLAN ON HOW TO RESPOND.**

**WHAT SHOULD DR. ADLER DO? WHAT SHOULD HE NOT DO? WHAT DO THE APA ETHICS CODE SUGGEST THE PSYCHOLOGIST DO? ARE THERE LEGAL STANDARDS ON WHAT A PSYCHOLOGIST IN THIS SITUATION DO? WHAT DO THEY SUGGEST?**

**CASE# 6: FORENSICS CASE OF CLIENT WHO COMMITTED SUICIDE**

**DR. ROGERS IS ASKED TO DO A FORENSIC EVALUATION OF SOMEONE WHO HAS CHARGES IN THREE DIFFERENT STATES, FEDERAL CHARGES, AND MILITARY CHARGES. DR. ROGERS DOES A COMPLETE FORENSIC EXAMINATION, AND BASED ON IT, WRITES IN HIS REPORT, THAT THIS MAN, WHO IS INCARCERATED, IS AT THE HIGHEST LEVELS OF A RISK FOR A COMPLETED SUICIDE.**

**THE DEFENDANT IS THEN PUT ON A JAIL SUICIDE WATCH. TO THE DISMAY OF THOSE WHO ARE OVERSEEING HIS INCARCERATION, HE SUCCESSFULLY TAKES HIS OWN LIFE.**

**WEEKS AFTER THIS MAN'S SUICIDE, HIS FAMILY CALLS THE FORENSIC PSYCHOLOGIST, ASKING FOR HIS REPORT AND SAYING THEY WERE TOLD HE WAS ON A SUICIDE WATCH. THEY ARE HIRING A LAWYER AND PLAN TO SUE THE JAIL.**

**WHAT DOES DR. ROGERS DO OR SAY? HOW DOES HE HANDLE THIS? WHAT DOES HE NOT DO OR SAY? WHAT APA ETHICAL GUIDELINE APPLIES?**

**CASE #7: CASE OF TESTIMONY IN ANOTHER STATE**

**DR. SNOW DOES HER DOCTORAL DISSERTATION ON PAD, OR PARENTAL ALIENATION DISORDER. AFTER SHE GRADUATES AND IS LICENSED, SHE CONTINUES TO DO RESEARCH IN THE AREA. SHE PUBLISHES, AND IS FREQUENTLY INVITED TO SPEAK AT PROFESSIONAL CONFERENCES ON THE TOPIC.**

**DR. SNOW GETS A REQUEST TO TRAVEL TO A DISTANT STATE TO BE A FACT WITNESS IN A CASE WHERE THE PRESENCE OR ABSENCE OF THIS DISORDER, IN A CHILD, IS AT ISSUE. SHE IS NOT SURE IF SHE SHOULD DO THIS. WHAT FACTOR OR FACTORS WOULD BE INCLUDED IN HER DECISION TO TAKE THIS REFERRAL AND PARTICIPATE IN THIS TRIAL IN A DIFFERENT STATE?**



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Volk v. DeMeerleer, 91387-1 (2016)