

Reining It In:
Making Ethical Decisions in a Forensic Practice

Donna M. Veraldi, Ph. D.
P.O. Box 1542
Billings, MT 59103
(406) 256-8004
dveraldi0717@gmail.com

Lorna Veraldi, J. D.
Associate Professor
School of Communication + Journalism
Florida International University
Biscayne Bay Campus
North Miami Beach, FL 33179
(305) 919-5523
lorna.veraldi@fiu.edu

A Paper Presented to
American College of Forensic Psychology
34th Annual Symposium
San Diego, CA

April 14, 2018

Panelists

Francis Abueg, Ph.D.
TraumaResource: Clinical and Forensic Psychology
Sunnyvale and Cupertino, CA

Jonathan C. Blassingame, MSW
Clinical Psychology Doctoral Student
Fielding Graduate University
Santa Barbara, CA

Kristine Jacquin, Ph.D.
Professor of Psychology and Dean
Fielding Graduate University
Santa Barbara, CA

Leon Morris, Ed.D.
Wichita Falls, TX

Overview

Alpert and Noble, writing in 2015 for *Police Quarterly*, state that “to perform their job effectively, police officers lie. They use deception, manipulation, and coercion to obtain important information from suspects.” Some forms of police coercion, like physical brutality, may be criminal. Some forms of police deception (like fabricating evidence) may be illegal. However, some degree of police coercion and deception has been found by courts to be within the bounds of the law.

As the Supreme Court found in *Miranda v. Arizona* (384 U. S. 436 [1966]), even in the absence of physical brutality, police interrogation is inherently coercive. Thus, the Court ruled, explicit warnings to suspects that they have a constitutional right to remain silent are required at the time of arrest. While the U. S. Supreme Court has held that police may not obtain evidence using “conduct that shocks the conscience.” (*Rochin v. California*, 342 U. S. 165 [1952]), what shocks the conscience, of course, is a subjective judgment, dependent on some presumptions about community standards that typically have not been put to a referendum vote or even tested with opinion polling. Is taking a suspect’s fingerprints without his or her consent illegal coercion? Probably not. Is extracting blood from an unconscious drunk driver, pumping the stomach of a suspected drug dealer who has swallowed pills during a police raid, or surgically removing a bullet from an unwilling suspect shot in the commission of a crime illegal coercion? Maybe so.

It is legal to make some false verbal assertions, like telling the suspect, “We found your fingerprints in her bedroom.” On the other hand, manufacturing evidence, like taking the suspect’s fingerprints and transferring them to an evidence card, which indicates the prints were

found in the victim's bedroom, is not permissible. Not every instance of coercion and deception in interrogation is unconstitutional.

The research is pretty clear that such coercive tactics as isolating a suspect and attempting to persuade him that there is no alternative but to confess, or lying to the suspect to persuade him that he would be better off by confessing—while legal—may contribute to false confessions. Simply because a tactic is legal does not mean it is useful in eliciting accurate information. Nor does it mean that it is ethical.

Today, we focus not on the efficacy or legality of coercion and deception, but on the morality or ethics of coercion and deception by forensic psychologists. Is it always wrong to use coercion or deception? Are there times when coercion and deception are not only legal and useful, but also ethical? How does a professional go about making judgment calls about the ethics of coercion and deception in a forensic practice?

Ethical dilemmas sometimes require making difficult choices among competing ethical principles and values. This presentation will discuss ethical dilemmas arising from the use of coercion and deception in forensic practice. In a forensic practice, the choice is not as simple as “do no harm” or “tell the truth.” What is and is not acceptable in terms of using various forms of pressure on individuals or of assisting agencies that put pressure

on individuals? How much information should forensic psychologists share with individuals about evaluation techniques? What does informed consent mean in the context of a forensic practice where many of the individuals with whom we interact are not there by choice?

Learning Objectives

This presentation about potential ethical dilemmas faced by forensic psychologists will be followed by a panel discussion about ways to approach and resolve ethics issues that arise in research and practice.

Participants will be able to recognize and analyze dilemmas that require professionals to make ethics decisions.

Participants will be able to evaluate and compare methods of approaching ethics decision-making in their professional practice and in their professional organizations.

Participants will be able to identify ways to improve ethics decision-making in their professional practice and in their professional organizations.

Goals of Studying Ethics

The Hastings Center has established a list of goals for studying ethics. These goals are helpful reminders that ethics decision-making is

more than a process of memorizing and adhering to rules and regulations.

The five goals for studying ethics, according to the Hastings Center, are:

- (1) recognizing ethical issues
- (2) developing analytical skills
- (3) tolerating—and resisting—disagreement and ambiguity
- (4) stimulating the moral imagination
- (5) eliciting a sense of moral obligation and personal responsibility

Part of recognizing ethical issues requires distinguishing between what is legal and what is ethical. Often, the two are consistent, but sometimes they are not. In some circumstances, individuals are called on to choose between legal duty and ethical duty, going so far as to engage in civil disobedience. A classic case is the choice faced by journalists ordered to testify about sources to whom they have promised confidentiality. This same dilemma has been faced by psychologists ordered in court to disclose patient information, but determined to withhold “the whole truth” in the interests of protecting patient confidentiality. What values and potential consequences must an individual consider before deciding to disobey a law in the interests of fulfilling an ethical obligation?

Ethical Principles of Psychologists and Code of Conduct

The American Psychological Association, in introducing its “Ethical Principles of Psychologists and Code of Conduct,” states: “If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard. If psychologists’ ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner in keeping with basic principles of human rights.”

This section of the Code of Ethics had been amended in 2002 to allow psychologists who faced legal sanctions when the Ethics Code conflicted with the law or regulations to choose to obey the law without violating their ethical obligations. This change was made at the urging of forensic psychologists who too often found themselves under court order to release data that the Ethics Code required them to keep confidential. The 2002 amendment to the Code stated: “If the conflict is unresolvable . . . psychologists may adhere to the requirements of the law, regulations, or other governing authority.”

However, the 2002 amendment created a public outcry after it was used to justify participation of psychologists in torture during the early years of the U. S. government’s war on terror. The APA again amended the

Code in 2010 to make it clear that psychologists may not adhere to legal requirements that violate human rights. The APA modified Section 1.02, Conflicts between Ethics and Law, Regulations, or Other Governing Legal Authority and Section 1.03, Conflicts between Ethics and Organizational Demands. Language that had urged psychologists to resolve such conflicts by adhering to legal requirements and the statement “to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code” was replaced with: “Under no circumstances may this standard be used to justify or defend violating human rights.”

In 2016, Section 3.04, Avoiding Harm, was amended to add paragraph (b), specifically forbidding psychologists from taking part in torture:

“(a) Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work to minimize harm where it is foreseeable.

“(b) Psychologists do not participate in, facilitate, assist, or otherwise engage in torture, defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that violates 3.04(a).”

Though the Ethics Code now prohibits psychologists from participating in torture, to what extent may psychologists use pressure and confrontation—short of torture—in evaluation and treatment in a psychological/legal context? After all, many of the people forensic psychologists interact with don't come to see them on a voluntary basis. Some of the consequences of psychologists' participation in legal matters may be quite painful for those with whom they interact. How should forensic psychologists balance pressure with emotional support? How should they consciously engage in thoughtful balancing—rather than simply ignoring the underlying coercive nature of their relationships to many of the people with whom they interact in their practice?

Its General Principles of ethics are “aspirational in nature,” says the APA, intended to “guide and inspire psychologists toward the very highest ethical ideals of the profession. They “do not represent obligations and should not form the basis for imposing sanctions.” However, they surely must be taken into account in any ethics decision-making. These General Principles include:

Principle A: Beneficence and Nonmaleficence. “Psychologists strive to benefit those with whom they work and take care to do no harm.” When

conflicts occur among psychologists' obligations or concerns, they are to resolve them in a way that "avoids or minimizes harm."

Principle B: Fidelity and Responsibility. "Psychologists establish relationships of trust with those with whom they work."

Principle C: Integrity. "Psychologists seek to promote accuracy, honesty, and truthfulness. . . . Psychologists do not . . . engage in fraud, subterfuge, or intentional misrepresentation of fact. . . . In situations in which deception may be ethically justifiable to maximize benefits and minimize harm, psychologists have a serious obligation to consider the need for, the possible consequences of, and their responsibility to correct any resulting mistrust or other harmful effects that arise from the use of such techniques."

Principle D: Justice. "Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices."

Principle E: Respect for People's Rights and Dignity. "Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination."

The General Principles, it is clear, do not encourage coercion or deception but nevertheless acknowledge that sometimes they may be necessary. And even within the enforceable Ethical Standards, the APA recognizes the need for psychologists seeking to do the right thing to exercise judgment, rather than simply to memorize and follow rules. As the APA states in the introduction to its Ethics Code:

The modifiers used in some of the standards of this Ethics Code (e.g. reasonably, appropriate, potentially) are included in the standards when they would (1) allow professional judgment on the part of psychologists, (2) eliminate injustice or inequality that would occur without the modifier, (3) ensure applicability across the broad range of activities conducted by psychologists, or (4) guard against a set of rigid rules that might be quickly outdated.

Models for Making Ethics Decisions

Black, Steele and Barney: Ask Good Questions to Make Good Ethical Decisions

What values and principles must psychologists balance in making such judgments? How should psychologists go about such balancing? Some useful questions for journalists, developed by ethicists Jay Black, Robert Steele and Ralph Barney for the Society of Professional Journalists, might easily apply to other professions as well, including the practice of forensic psychology:

1. What do I know? What do I need to know. (Finding facts and considering context, rather than just memorizing rules, is an essential first step in making decisions about ethics.)
2. What is my purpose?
3. What are my ethical concerns?
4. What organizational policies and professional guidelines should I consider? (Not until the first three questions are answered do the codes of ethics even come into play.)
5. How can I include other people, with different perspectives and diverse ideas, in the decision-making process?
6. Who are the stakeholders—those affected by my decision? What are their motivations? Which are legitimate?
7. What if the roles were reversed? How would I feel if I were in the shoes of one of the stakeholders?
8. What are the possible consequences of my actions? Short term? Long term?
9. What are my alternatives to maximize my truth-telling responsibility and minimize harm?
10. Can I clearly and fully justify my thinking and my decision? To my colleagues? To the stakeholders? To the public?

Asking good questions, rather than focusing on rules, say Black, Steele and Barney, guides us to better outcomes. Doing the right thing starts with asking “What do I know?” What are the facts, the context, that lead us to prioritize the most important of sometimes competing ethical values in deciding how to act?

The Potter Box

Ralph Potter’s model, The Potter Box, is another way to visualize this process. Using The Potter Box as a guide, we are asked to

1. Define the situation objectively and in detail.
2. Identify values that relate to the situation.
3. Identify the principles that justify our decision.
4. Choose our loyalties from among those affected by our decision.

Like Black, Steele and Barney’s questions, The Potter Box starts with analysis of the facts, rather than the rules, and invites us to work our way through a process, returning to previous steps as we gain new insights.

In either case, we are asked to consider those who will be affected by our decisions and actions and to try to see the situation from a variety of perspectives other than our own--as The Hastings Center would suggest, to exercise both our powers of analysis and our moral imaginations.

This is particularly challenging in a forensic psychology practice, where the individuals with whom the professional interacts may not come to the interaction voluntarily and over whom the psychologist may exercise great power. Moreover, many of the tools and methods psychologists use, one could argue, are by their nature not transparent. Forensic psychologists, to do their jobs effectively, may be required to engage in coercion and deception.

A basic ethical value for most of us is honesty. We are told from an early age to tell the truth. Yet the research tells us that children learn to lie at about the same time they learn to walk and talk, and experts view lying as a normal developmental milestone that peaks at adolescence as teens seek to establish their independence from their parents. We can all think of examples where lying is not only seen as acceptable and polite (so-called little white lies or social lies), but even ethically required (for example, to protect the lives of the innocent). What matters is not so much whether we lie, but why we lie. When are psychologists allowed, or perhaps required, to lie?

According to APA Principle C, Integrity: "Psychologists seek to promote accuracy, honesty and truthfulness in the science, teaching, and practice of psychology." Yet the APA also recognizes that psychologists

face situations “in which deception may be ethically justifiable to maximize benefits and minimize harm.” How does a psychologist seeking to make the best ethical decision determine situations in which deception is justified?

Applying the APA’s Ethical Principles in a Forensic Setting

Applying the APA’s Ethical Principles in a forensic setting demands constant judgments about exceptions to the rules. These exceptions may not arise as frequently in other areas of practice. If legally mandated clients refuse to engage in treatment, they may face severe legal consequences. While forensic psychologists may aspire, under Principle E, to respect the rights of the individual to self-determination, they also must aspire, under Principle A, to safeguard the welfare of those with whom they interact, as well as the welfare and rights of those who may be affected by their interactions. Those two principles may conflict. Which principle takes priority and to whom should the psychologist be loyal?

When psychologists test and evaluate their legally mandated clients and provide expert opinions, their opinions carry great weight and consequences for those with whom they interact and for others affected by the outcomes they help to shape. As an ethical matter, the psychologist’s competence and scientific responsibilities, under Principle B, are

paramount when they exert this kind of influence. Yet sometimes forensic psychologists exercise this power with opinions that are not well supported by available data or research literature. Sometimes, individual professionals and even professional organizations adopt ethical rules that are politically expedient, but poorly thought through. Sometimes, professionals and their organizations have fallen short of Principle C, Integrity, failing to review all relevant literature before issuing science-based decisions that are not based on all the science available. How could such failures have been avoided by a more thoughtful process of ethics decision-making?

Principle D, Justice, reminds psychologists that with great power comes great responsibility to recognize “the boundaries of our competence and the limitations of our expertise.” In treating complex PTSD, for instance, or predicting dangerousness, the forensic psychologist must be mindful of these limitations in responsibly exercising professional judgment. How can individual professionals and professional organizations more effectively elicit a sense of moral obligation and personal responsibility of psychologists to recognize the limitations and boundaries of their expertise?

Discussion Questions

Here are some of the questions that the panel and participants will address:

1) The APA Code of Conduct Section 3, “Human Relations,” states that when psychologists conduct research or provide assessment, therapy, counseling, or consulting services, they obtain the informed consent of the individual or individuals. . . **except** when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Ethics Code.” Are there times in your forensic practice when you find it necessary to conduct activities without an individual’s informed consent? Can you give us some examples where you might do so? What values and possible consequences (short term and long term) ought to be considered in deciding whether to conduct activities without an individual’s informed consent?

(2) In a related question, Section 3.10 (b) states that for persons who are legally incapable of giving informed consent, the psychologist should get consent from a legally authorized person. Further, “when consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual’s rights and welfare.” What are some “reasonable steps” that you think ought to be used to protect

individuals from whom informed consent is not required or allowed? Are there times when you have taken such steps in your own practice? What values and possible consequences (short term and long term) should be taken into account in deciding how to protect the rights and welfare of individuals whose consent is not permitted or required?

(3) Deception in research is covered in Section 8, Research and Publication. Section 8.07(a) states: “Psychologists do not conduct a study involving deception unless they have determined that the use of deceptive techniques is justified by the study’s significant prospective scientific, educational, or applied value and that effective nondeceptive alternative procedures are not feasible.” In designing and conducting research, or in supervising graduate student research, what steps should be taken to apply the balancing test required in the APA’s Code of Ethics? Are there examples of research in which you have determined that the benefits of the study justify deception? What values and potential consequences (short term and long term) should be considered in making such a decision?

(4) Often in forensic practice, we administer tests designed to detect issues such as malingering. Isn’t it deceptive not to tell those we test the purpose and design of the tests so that they can give informed consent? What should we tell those we test about the tests we use—either before or

after we administer those tests? What aspects of testing are we allowed—or even obligated—as an ethical matter, to keep secret from the individuals we are testing? What if an individual being tested asks questions about the test? Are we allowed—or required—to provide any answers? If so, as an ethical matter, what should we disclose? What should we withhold? What values and potential consequences (short term and long term) should be taken into account in making these decisions?

Selected References

Alpert GP, Joble JJ: Lies, true lies, and conscious deception: police officers and the truth. *Police Quarterly*, June 2009; 12:2: 237-254. Retrieved July 22, 2015 from <http://pqx.sagepub.com>)

American Psychological Association: APA Launches Comprehensive Online Resource on Treatment for PTSD. Aug. 1, 2010. Retrieved Mar. 12, 2018 from <http://www.apa.org/news/press/release/2017/08/ptsd-treatment.aspx>

American Psychological Association: Ethical Principles of Psychologists and Code of Conduct, Including 2010 and 2016 Amendments. Retrieved Mar. 14, 2018 from <http://www.apa.org/ethics/code/index.aspx>

Anxiety and Depression Association of America: Treatment for PTSD. Retrieved Mar. 12, 2018 from <https://www.adaa.org/understanding-anxiety/posttraumatic-stress-disorder-ptsd/treatment>

Behnke S: What kind of issue is it? A four-bin approach to ethics consultation is helpful in practice settings. *Monitor on Psychology*, Feb. 2014; 54:2:62. Retrieved Aug. 18, 2017 from <http://www.apa.org/monitor/2014/02/issue.aspx>

Benn P: Medicine, lies and deception. *Journal of Medical Ethics*, Apr. 2001; 27:2:130-134

Bhattacharjee Y: Why we lie. National Geographic: June 2017:231:6:30-51

Black J, Steele R, Barney R: Doing Ethics in Journalism. The Society of Professional Journalists, 1993

Courtois C, Ford J: Treatment of Complex Trauma. New York, The Guilford Press, 2016

Diversion court success. Feb.18, 2016. Retrieved Mar. 12, 2018 from http://www.apg-wi.com/diversion-court-success/article_8c9b770a-fd10-50c1-9a44-9fde1d2

Diversion programs: an overview. Retrieved Mar. 12, 2018 from <https://www.ncjrs.gov/html/ojjdp/9909-3/div.html>

Drug courts work. Retrieved Mar. 12, 2018 from <http://www.nadcp.org/learn/facts-and-figures>

Fainzang S: An Anthropology of Lying: Information in the Doctor-Patient Relationship. New York, Routledge, 2016

Frueh B, Grubaugh A, Elhai J, Ford, J: Assessment and Treatment Planning for PTSD. Hoboken, NJ, Wiley, 2010

Hastings Center, Institute of Society, Ethics and The Life Sciences: The teaching of ethics in higher education. Hastings-on-Hudson, NY, 1980, cited in Black J: Mass Media Ethics. University of South Florida, St. Petersburg, FL, 1994

John E. Reid and Associates, Inc.: Clarifying misinformation about the Reid technique. 2012. Retrieved Mar. 18, 2017 from www.reid.com/pdfs/20120311.pdf

National Center for PTSD: Treatment of PTSD. Retrieved Mar. 12, 2018 from <https://www.ptsd.va.gov/pub/treatment/therapy-med/treatment-ptsd.asp>

Roberts S: Joseph Lifschutz, 92, dies; defended therapist rights. The New York Times, Apr.30, 2017, 21

Sandomir R: Marion Pritchard, wartime rescuer of Jews, dies at 96. The New York Times, Dec. 24, 2016, A14

Senese LC: Ten “do’s and don’t’s” for obtaining a reliable confession. John E. Reid and Associates, Inc. Jan./Feb. 2017. Retrieved Mar. 18, 2017 from www.reid.com/educational_info/r_tips.html

Slovenko R: Evidence obtained by “conduct that shocks the conscience.” American Journal of Forensic Psychology 2017: 34:3:49 - 57

Smiley J: The good lie. The New York Times Magazine, May 7, 2000, 58 - 59

Stone A: Is your child lying to you? That’s good. The New York Times, Jan. 7, 2018, 7 SR

Veterans court: incredible success rate. Retrieved Mar. 12, 2018 from <http://jacksonville.com/opinion/editorials/2012-02-10/story/veterans-court-incredible-success>

Weiss B, Feldman RS: Looking good and lying to do it: deception as an impression management strategy in job interviews. Journal of Applied Social Psychology 2006:36:4:1070-1086
