

Introduction

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The writing of clear, precise examination reports that are cogent and engaging is a practice that lies at the heart of the work in forensic psychiatry. There are many skills that are necessary to successful forensic practice, including the abilities to conduct a productive examination of the subject, distill the most important and relevant information from a large quantity of data, and process information in a rational manner in order to answer the legal questions posed. Yet it is the skill at report writing that largely defines forensic practice; it demarcates evaluators' abilities and demonstrates their usefulness to those who enlist their efforts. The written report illustrates the importance of expert mental health evaluation to critical questions posed by the legal system. It reveals the care and competence with which the evaluation was conducted. It represents the value of the mental health professions and the contributions they make to public life. The written forensic report is thus a highly complex body of work that signifies more than a pragmatic response to the particular questions posed to the evaluator.

The development of skill at forensic report writing requires knowledge, experience, and guidance. Yet, as Wettstein points out, there is relatively little discussion in the literature on the precise subject of report writing; what exists has mostly focused on "mechanics and organization" of reports (Wettstein 2010a, p. 46). It is, of course, necessary to discuss these dimensions of report writing, and much will be said about them in this textbook. But it is also vital to the professional development of forensic evaluators to engage in serious circumspection about the multiple dimensions of the work that are less often or less fully discussed. This, too, is part of the intention of this textbook.

A broader conceptualization of report writing is informed by dynamic and evolving reflections upon the work. Moving beyond the structure of reports, Enfield contributed several conceptual embellishments to descriptions of the forensic report. He described it as a form of expert witness testimony and an example of "applied scientific writing" (Enfield 1987, p. 386). Griffith and Baranoski have conceived of the forensic report as "performative writing" (Griffith & Baranoski 2007). They have challenged the notion that such reports are merely impersonal, objective documents but are inherently complex narratives requiring of the examiner a developed skill in crafting this performative element (Griffith & Baranoski 2007; Griffith et al. 2010). (These ideas are discussed in detail in Chapter 5.)

It has been argued persuasively that forensic report writing is a core competency in forensic practice (Griffith & Baranoski 2007; Simon 2007; Griffith et al. 2010). As one anonymous reviewer of this textbook proposal put it, mental health professionals are often taught to write forensic reports "via folklore and tradition." Proficiency at report writing is more than learning and practicing construction techniques passed down from generation to generation. The complex task of effective report writing can be understood as occupying a

central position in the professional development of the forensic practitioner. This is one perspective on the forensic report, viewing it as a component of professional skill development for certain mental health practitioners. Fleshing out this perspective is the task of much of this textbook, which will explore ethics, narrative, and draftsmanship in addition to a study of preparatory elements, special considerations in the content of various reports, and a range of special issues.

Other perspectives are equally important. The forensic report must also be understood as part of an evolution of professional practice in recent decades. It fulfills various functions that are required by the legal marketplace, and which are integral to a set of interactions between mental health professionals and legal professionals. The forensic report is an instrument of enormous consequence for the individuals evaluated; circumspection is required in the task. Evaluators should reflect upon the nature of professional identity and the presence or absence of normative ethics relevant to a series of overlapping but distinct identities and roles. In this chapter, we will frame some of these perspectives and at least begin their exploration.

Context of the forensic report

The forensic report exists within a universe of rich, complicated, overlapping and sometimes competing connections and interactions among societal, legal, medical, psychological, and professional forces. Forensic evaluators do not simply perform a mental health evaluation and document its results (Griffith & Baranoski 2007). Understanding this work requires an appreciation not only of the subtleties and sophistications of the craft, but of the full context within which the work is conducted.

Effects upon evaluatees

It is an obvious point – though rarely discussed – that forensic evaluations and the opinions and wording of written reports hold potentially enormous and irreversible consequences for the evaluatee and other legal stakeholders in various disputes (Silva et al. 2003). Thus, society has a significant interest in the skills and ethical behavior of forensic evaluators. Several of the authors in this text have taken up the task of describing various aspects of the ethics of forensic practice and report writing. It is worth being circumspect, in particular, about the effects of forensic reports on the evaluatees.

How should health care professionals approach tasks in which the legal questions posed are limited to concerns for the protection of the public? O’Grady asked this question about detention in the United Kingdom under the Mental Health Act (O’Grady 2002). In the United States, a similar question can be posed regarding the various Sexually Violent Predator statutes, which require no promise of treatment in exchange for the loss of liberty. Some authors have argued that forensic evaluators must demonstrate restraint in service delivered to society because of such concerns (see Allnutt & Chaplow 2000). Others argue that service to the state is not problematic if there is simultaneous assistance to the evaluatee who will thereby receive beneficial interventions (Mullen 2000). There are situations in which the evaluation report will be the first step toward the evaluatee receiving needed clinical services (Enfield 1987). Some forensic determinations simply will not align with the best interests of the evaluatee, depending on the perspective taken. That reality, however, does not free the writer to adopt a counter-therapeutic tone in the report (Enfield 1987). Whether forensic reports become the connection to countertherapeutic results depends on the outcome of the case except in the unlikely

event that the forensic writer clumsily offends the evaluatee unnecessarily. If a report leads to a period of incarceration or other detention, the presence or absence of appropriate care in the custody environment would determine the outcome along the countertherapeutic-nontherapeutic-therapeutic dimension. Whether one sees the report as a nexus to such outcomes or not depends on whether one takes a view that insists upon some direct or indirect benefit to the evaluatee as a part of ethical practice or adopts another ethics frame in which the consequence is irrelevant as long as other values like respect for persons and honesty have been promoted.

A related caution has to do with the use of empathy in forensic evaluations. Appelbaum describes “forensic empathy” as the quest for “awareness of the perspectives and experiences of interviewees” in an effort to give voice to their concerns in the report (Appelbaum 2010, p. 44). Shuman distinguishes between “receptive empathy” and “reflective empathy.” The former he describes as “the perception and understanding of the experiences of another person.” This seems to be the form of empathy that Appelbaum has in mind. Shuman agrees that this is an appropriate use of empathy in forensic evaluations. Reflective empathy, on the other hand, communicates an “interpretation or understanding to the defendant in a manner that implies a therapeutic alliance” (Shuman 1993, p. 298). This, of course, undermines the warnings that are given to evaluatees at the initiation of the examination about the limits of confidentiality and the lack of a treatment relationship.

Candilis and colleagues describe such receptive empathy as an attitude of the “compassionate professional” who is drawn into the multiple aspects of the subject’s suffering (Candilis et al. 2001, p. 169). Griffith has described the compassionate approach to an evaluatee as part of the task of constructing narrative (Griffith 2005). Simone Weil observed that, “Every created thing is an object for compassion because it is limited” (Weil 1998, p. 143) and that the use of power must be entrusted only to those who understand this obligation toward all human beings (Weil 1998, pp. 137–138). Norko has argued that the use of power in forensic evaluations calls for an ethics construct in which compassion plays a central role (Norko 2005). However one parses these concerns, they are certainly manifest as context for the forensic report that is worth contemplating.

Professional identity and its implications

Wettstein (2010a, 2010b) has provided a listing of ways in which forensic report writers see themselves (see Table 1). How report writers see their role in this context is likely to have at least some effect upon how the role is performed. This has many pragmatic dimensions of style, attitude, quality of interactions, objectives, etc., but also includes an obvious ethics dimension. What rules would simultaneously and adequately cover the scientist and the artist? Or the business person and the policy advocate? Does it matter what the role of self-identity is, as long as the behavior conforms to necessary and appropriate guidelines that apply broadly? This might be part of the consideration in O’Grady’s call for a “robust ethical framework” (O’Grady 2002, p. 179) or the notion of “robust professionalism” as developed by Candilis, Martinez, and Dording (Candilis et al. 2001; Martinez & Candilis 2005). (See Chapters 4 and 19 for further discussions.)

Pellegrino has offered a similar list of the various roles which physicians in general have come to play: clinical scientist, body mechanic, businessperson, social servant, and helper/healer (Pellegrino 2003). Pellegrino argues that the role of healer is primary to all the others, and forms the true foundation of medical ethics. He would not look, for example, to a businessperson’s ethics and work backward to an ethic of the physician as

Table 1 Possible self-identities of forensic report writers*

Scientist
Clinician
Investigator
Journalist-reporter
Quasi-attorney
Judicial decision-maker
Court educator
Businessperson
Health care administrator
Artist-writer
Policy advocate

* See Wettstein 2010a and 2010b

businessperson. Given that forensic practitioners deliberately eschew the role of healer in conducting forensic evaluations, Pellegrino’s alternate theory of virtue ethics may be more workable in relation to role identity. He offers examples of the following virtues for physicians: fidelity to trust, benevolence, effacement of self-interest, compassion and caring, objectivity, courage, intellectual honesty, humility, and prudence (Pellegrino 2003, pp. 14–15). Forensic practice might more easily apply these virtues to the various role identities listed by Wettstein.

Expectations from the legal system

Rix has provided an account of expectations that the court system in the United Kingdom has of its experts as part of the so-called “Woolf Reforms” of 1996 (Rix 1999). Lord Woolf undertook an inquiry to examine needed changes in the civil justice system. The expectations that the courts should have of experts’ written reports are listed in Table 2. What the legal system in the UK anticipates from its experts confirms the need for appropriate knowledge, skill, and experience in writing forensic reports. Many of these expectations have face validity. Some have been expressed quite directly in professional guidelines. For example, in conformity to the third item in Table 2, the American Academy of Psychiatry and the Law (AAPL) guidelines for competency to stand trial evaluation reports make the explicit recommendation that the writer “should also state clearly any limitations or qualifications of which the psychiatrist is aware” (Mossman et al. 2007, p. S48). It is one of our objectives in this textbook to articulate the principles of practice in the forensic report that would fulfill expectations such as those proposed by the legal system in the UK.

There are some items here that are worthy of additional comment. The issue of the expert forming an “independent view” of suggestions made to the expert by outside sources is not often discussed explicitly. This might include comments from counsel, hoping to influence the expert’s thinking. It might also include the “voices” of evaluatees or collateral informants hoping to have their viewpoints validated. Evaluators should consider all sources of

Table 2 Courts' expectations of experts' written reports from the "Woolf Reforms"

The overriding duty is to help the court on matters of the report writer's expertise
The writer believes that the facts of the report are true and opinions expressed are correct and within the writer's field of expertise
Any matters which may affect the validity of the opinions are represented in the report
When there exists a range of opinions about the legal questions posed, the writer summarizes the range of opinion and gives reasons for the writer's chosen opinion
All material instructions given to the writer, and all sources of information, are detailed in the report
Nothing suggested by another party is included or excluded from the report without the writer forming an independent view of it
The writer believes the report to be complete and accurate, and that it describes all matters believed relevant to the expressed opinion
If at any time, the existing report requires correction or qualification, the writer will give written notice of that fact to the appropriate instructing authority
The report is understood to form the evidence that will be given under oath or affirmation
The writer may expect the public adverse criticism of the court if the writer has not taken reasonable care in meeting these standards
The writer confirms that no contingency fees have been arranged for the writer's work in the case
The report is for the sole purpose of assisting those authorities requesting the report, and may not be used for any other purpose

* Adapted from Rix (1999)

information, and represent them in a final report in an authentic manner. Clearly, though, such authentic representation does not presume or prevent the report writer from coming to an independent opinion about the relevant legal matters.

The issue of expressing a range of possible opinions is a point on which there might be a reasonable difference of opinion among forensic report writers. Describing the range of possible opinions and the data supporting each might increase the transparency of the report. It could also lead to greater confusion than clarity. Some report writers might adopt this approach in some cases, but avoid it in others when it would render the report unclear or confusing.

Few experts in the United States would expect public criticism by the court for failing to attend to the expectations for effective report writing. They might expect embarrassment at mistakes revealed under cross-examination, or private criticism for failing to assist retaining counsel appropriately (although the latter is more likely to be manifested by a lack of repeat invitation to participate in forensic work with the attorney). The possibility of public criticism by the court itself for less than satisfactory work would have an interesting effect upon the practice of forensic report writing; perhaps not necessarily an adverse effect on quality, but likely an adverse effect upon the anxiety experienced by many report writers anticipating oral testimony.

Table 3 Academy of Experts’ four principal hallmarks of a good report*

A stand-alone, concise, user-friendly format, expressed in the first person singular by the person whose opinion has been given or who adopts as his own the opinion of others
Text which is arranged in short sentences and paragraphs
Judicious use of appendices
Matters of fact being kept separate from matters of opinion

* Reproduced with permission from Rix (1999), p. 157.

Principles, guidelines, and standards

Many clinical practice guidelines are unsuitable as practice standards in that they do not define standards of care or practice. Guidelines should not be developed to articulate a single, acceptable approach, but rather should allow flexibility and a range of potential approaches to the task (see Zonana 2008). Rix has conveyed a similar approach taken by the Academy of Experts in the UK, which is a professional society and an accrediting body concerned with promoting the use of independent experts (Rix 1999). The Academy of Experts has described four principal hallmarks of a good report, which it intends as a model rather than a standard, acknowledging the same concerns as noted by Zonana above (see Table 3).

We stand in agreement with these approaches. We offer a caution that the act of “adopting” the opinions of others (see Table 3) might more readily be described as the notion of coming to agree with an opinion that is shared by another, after thorough and careful review of all relevant data. Rix affirms that “slavish adherence” to the model principles is not required (Rix 1999, p. 159). As an example of adherence to these model principles, Mossman and colleagues make explicit their recommendation for a stand-alone format in the guidelines for competency to stand trial evaluation reports (Mossman et al. 2007, p. S48).

Each of the guidelines for forensic evaluations promulgated by the American Academy of Psychiatry and the Law has made a statement reflecting that there are multiple formats that might be adopted by a writer in a given case (Giorgi-Guarnieri et al. 2002, pp. S24–S25; Mossman et al. 2007, p. S52; Gold et al. 2008, pp. S20–S21). For example, AAPL’s practice guideline on insanity defense evaluations includes this statement: “There is no one correct style or format for writing a report” (Giorgi-Guarnieri et al. 2002).

In our planning for this textbook we have adopted that same strategy, including the contributions of colleagues who differ on some issues of report writing. For example, some of our authors are adherents of the strategy of short, concise reports, which are user friendly, and focus attention to the most relevant matters, while others prefer lengthy reports with the belief that they will be more persuasive, more demonstrative of the professional practice involved in the evaluation, and will assist in anticipated oral testimony. There are similar differences of opinion about offering ultimate issue testimony in written or oral form. Some of those differences are derived from jurisdictional proscriptions, but others are matters of preference in professional practice. Differences also exist in the matter of inquiring into a defendant’s version of the alleged criminal act during an evaluation of competency to stand trial, again with some jurisdictional constrictions, as specifically described in the AAPL guidelines on competency to stand trial evaluations (Mossman et al. 2007, pp. S35–S36).

It has been our explicit desire to avoid setting standards of practice. We have attempted to develop a rich and far-reaching discussion of principles of practice, acknowledging fair

variations within acceptable or even exemplary parameters. Professional efforts in report writing serve many functions and are produced within contexts both internal and external to particular disciplines. Given those realities, no other approach seems reasonable.

Purpose of textbook

Our goal in designing this textbook was to express a comprehensive set of principles of writing the forensic report, taking into account the complexity and variability of report writing tasks. Recent work has begun to address the conceptual issues that frame and instill aspects of forensic writing (Griffith & Baranoski 2007; Appelbaum 2010; Griffith et al. 2010; Wettstein 2010a). This textbook attempts to broaden the inquiry toward a more comprehensive set of tasks, and to formulate the principles that underlie and inform those tasks.

We have decided to sketch the major elements and challenges of effective report writing through a series of 19 chapters organized in 3 conceptual sections. Section 1 (“Principles of writing”) explores general principles that apply to the work of any type of forensic report, including processes that prepare the writer to engage the work and conceptual approaches that ought to infuse the writing itself. Section 2 (“Structure and content”) examines the essence of principles and practice in various types of forensic report-writing endeavors. In Section 3, several chapters explore a range of topics that we have included under the heading of “Special issues.” In the Conclusion, we attempt to identify a number of themes that have emerged in the chapters which precede it, including narrative, respect for persons, ethics, the role of clinical guidelines, and the opportunities for further empirical research related to report writing.

Professionals looking for guidance about aspects of types of reports in which they are not yet fully practiced will find Section 2 of particular interest. We hope that all forensic report writers will consider the ideas presented in Section 1. The special issues raised in Section 3 will apply variously to both particular and common circumstances in report writing.

We have attempted to distill the experience of forensic report writing into a guide meant to both transmit knowledge and insights and to stimulate internal reflection and serious self-examination of one’s tangible work and its broader implications. There exists significant variation in styles of practice within generally acceptable professional guidelines. We have asked our authors to focus on abstracting the most important principles of their assigned topics so that they may each be presented in a single, concise chapter. Readers may wish to augment this discussion of principles by referring to the templates and sample reports that are already available in the literature (e.g., Melton et al. 2007; Berger 2008; Greenfield & Gottschalk 2009).

Finally, we counsel readers of the importance of finding opportunities for skillful review of their work by senior colleagues who are willing to share their expertise. This may occur in formal training programs, but should also be found in peer consultation and peer review in the formative stages of forensic practice.

The ability to write effective forensic reports and to be circumspect about the processes, implications, and consequences of forensic report writing will serve mental health professionals well. Their input is continuously required by courts, attorneys, and boards. Performing this work with distinction serves not only the individual practitioner and the legal marketplace, but the mental health professions as a whole. We hope that this textbook will assist our readers in taking their necessary and appropriate places in describing the many and complex issues of mental health and mental illness in the legal arena.

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Section 1

Principles of writing

Chapter

1

History and function of the psychiatric report

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The psychiatric report made a relatively late appearance in psychiatric jurisprudence. This has not prevented it from becoming the primary mechanism by which psychiatric opinions are communicated to courts. Today, the written report informs legal decisions in the absence of oral testimony (Silva et al. 2003). This chapter first explores the history of those developments. Changes in the form and function of the report have been driven by statute, by regulation, and by the activities of professional organizations representing forensic psychiatrists. As a result of those changes, today's psychiatric reports have come to fulfill a range of functions beyond the simple communication of a psychiatric opinion. Those functions are reviewed later in the chapter.

1.1 Origins

We take for granted the present requirement of producing written expert psychiatric reports, but this was not always the situation even in recent American jurisprudence. In the historical literature relating to the use of experts in court reference to the written expert report is uncommon. References to expert psychiatric reports are less common still. The first instances of physicians assisting fact finders are in Roman cases (Lewis 1894) such as that following the death of Julius Caesar (Gutheil 2005). In medieval Europe physicians were called upon to interpret wounds (Overholser 1953) and to testify in cases of violent death (Ciccione 1992).

In America, medical experts seem first to have appeared in courtrooms in the nineteenth century. By 1900 their use was commonplace (Mohr 1993). After the appearance of T. R. Beck's *Elements of Medical Jurisprudence* in 1823, courtrooms seem to have admitted evidence from an increasing number of medical experts, often with dubious credentials. Mohr (1993) observes that Beck cautioned physicians about obscure language, verbal pyrotechnics, and becoming courtroom bullies. Beck was dismayed by the increasing use of experts, who he thought often made fools of themselves on the stand. The possibility of using written reports to tone down the rhetoric is not mentioned: there was no incentive for attorneys to have their experts prepare written reports, as the important action took place in the form of verbal debates. Accounts of nineteenth-century trials note that experts adopted an adversarial stance, confusing juries as to where the truth lay. The problem was compounded by the experts being paid by their respective sides. The first widespread use of psychiatric reports seems to have come in civil cases, and especially in will contests. The pattern, it appears, was that the experts were asked to read transcripts of fact witnesses and then to prepare narrative reports addressing the question of insanity at the time the will was written or amended.

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