

Evaluations in Jails, Prisons, and Forensic Facilities

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It's time for a more practical column. (The holidays are over, and I'm fresh out of philosophy.) This month I will talk about evaluating people who are incarcerated, for one reason or another, in jails, prisons, or forensic hospitals. I will focus on jail and prison forensic assessments, not routine clinical ones, that one performs as an outside consultant rather than as an employee of the facility. And since I get to make the rules for these columns, we'll assume you must see the evaluatee on his turf, not yours.

I won't address interview content *per se* in this column, since it is similar to that of any other forensic assessment: one starts with the presenting situation and open-ended questions, gets more specific with details, then moves to other parts of the history and a mental status exam. Ancillary testing and other procedures are arranged as appropriate. Instead, I will focus on the evaluation setting, process, and safety, and will say a few words about ethics.

REQUIREMENTS FOR AN ADEQUATE EVALUATION

Know What You're Doing

The evaluator must understand the current case and its legal and psychiatric/psychological context, and then try to cover everything that's relevant. Before interviewing the defendant or inmate, you should review the appropriate statute and discuss it with the attorney who retained you. For example, if the purpose of the evaluation is to assess competence to stand trial, the evaluator should be familiar with the relevant parts of the relevant statute, why someone believes an assessment is needed, and what kind of evaluation is appropriate. If criminal responsibility is the issue, the evaluator must be familiar with, and experienced in, those requirements. Evaluations for newly defined sexual predator commitments require special knowledge and care, as do reviews and sentence mitigation assessments in death penalty cases.

Setting

The evaluation should be face-to-face (a "contact" visit in correctional parlance). There should be enough privacy so that no one else can overhear the conversation and the defendant or inmate believes he or she can speak freely. The few individuals who worry about the room being "bugged" are usually wrong; I tell evaluatees that, although I can't be absolutely certain the room isn't bugged, the court's rules carefully protect them against unauthorized eavesdropping.

The setting should allow unfettered communication, within security requirements. From time to time, facilities try to force evaluators to use "visitor" booths with glass barriers and those little telephones one sees on *Law and Order*. I don't think one can do a reasonable evaluation under those circumstances, and I politely tell the staff that we need to make other arrangements. Sometimes facility rules seem to require a staff person in the room with the defendant/inmate. That, too, is unacceptable in almost every case, and I politely decline to proceed until other arrangements can be made.

An "acceptable" setting is not usually a perfect one. The room may not look much like your own office, it will probably be locked, and there may be bars between you and the evaluatee. The evaluatee may remain handcuffed or shackled, perhaps to a table or chair. There may be a guard sitting outside the door, or visible outside a viewing window. I believe most evaluations can be carried out under those circumstances, since the two main requirements of privacy and unfettered communication are generally met. (Assessments that require writing or

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other physical contact or movement should be accommodated as necessary.)

Notice that I've used the word "politely" twice in this discussion. Correctional facility staff and administrators have important security responsibilities and are interested in the evaluator's safety (and, as a few have told me, in avoiding the paperwork required if he or she should be injured). The guard who escorts you to the interview setting probably doesn't have the authority to change the security arrangements; he or she will have to check with a supervisor or a senior manager, and other arrangements may or may not be feasible.

Carry the phone number of the attorney who has requested the evaluation. You may have to call to explain what you need, or why you can't proceed. The lawyer or other person for whom you are an agent may be able to talk with a facility manager and save the day. If not, he or she will probably agree that to do an evaluation under inadequate circumstances is unwise and likely to invite the other side to challenge it. I recommend postponing the evaluation rather than accepting an interview setting that you believe is inadequate for your purpose.

What if the opposing lawyer (generally a criminal defendant's attorney) wants to attend the evaluation? Defendants have every right not to incriminate themselves, and their lawyers sometimes like to be there to modify or stop the interview if things start to look bad to them.

I almost never allow this, since I believe invested observers or participants (as contrasted with trainees) limit communication and further taint an already difficult assessment process. Some forensic psychiatrists and psychologists grudgingly allow opposing lawyers to be in the room if both sides agree and they stay outside the evaluatee's vision and say nothing. I'd much rather simply record or videotape the interview (and sometimes do so in any event).

When lawyer attendance is requested, talk it over with the retaining attorney. If the parties can't agree and a judge orders it, you are free either to make the best of the situation (with appropriate disclaimers in your report or testimony) or decline to participate (if you believe you can't do an adequate evaluation under those circumstances).

What if the retaining attorney wants to sit in? A defendant/inmate may refuse to say a word without his lawyer present, even when you are working for that lawyer. Most of the time, the attorney can convince the evaluatee that it is best that you do the evaluation in private. In a few cases, I have agreed to do interviews with

the person's lawyer in the room, with the understanding that he or she will be as passive as possible (and the understanding that there may be a relevant caveat in any report or testimony).

The Interview Process

The first thing I usually ask, after identifying myself, is whether anyone has told the evaluatee that an assessment was scheduled. The answer is often "no." Tell the lawyer who retains you to let the evaluatee know you're coming, and why.

It's important to describe your role and purpose clearly, including the fact that parts of the assessment will be shared with whoever retained you and may affect the case. Document whether or not the defendant/inmate understands this. If you are recording the interview, disclose that fact as well. In most cases, one need not get written authorization for the interview from the evaluatee; his willingness to participate after your explanation is usually sufficient. Court-ordered evaluations guarantee access to the individual, but don't assure participation. I often provide evaluatees with a written information sheet that describes what we are doing and what may happen to the information that is generated, and discuss it with them, but that's not a release or authorization to proceed.

Be sure you have enough time to complete an adequate evaluation. Some take longer than others; none—except perhaps some competency examinations—should require less than a couple of hours (and some may require much more, assuming the evaluatee will participate). In jail and prison settings, evaluations must often be completed in one day, perhaps in a single interview of several hours. Whenever feasible, however, I like to have at least two discrete interviews, even if they are separated only by a short break. This provides more opportunity for the evaluatee to adapt to the process, and perhaps reconsider his attitude or answers. Don't give the evaluatee an MMPI or other test to complete between sessions, though; you may find that the results represent a group effort. Psychological testing should be done in the interview setting with a qualified, trustworthy proctor.

Language barriers, including signing needs for a deaf evaluatee, are best addressed by finding a forensic evaluator who can interview the person fluently in his or her own language. I recommend against relying on interpreters for forensic evaluations, and I especially oppose using interpreters who are not qualified and experienced in both clinical and forensic work. This

recommendation refers to meaningful barriers to communication or understanding (including both lack of vocabulary and clarity of accent); most defendants or inmates for whom English is a second language do not require evaluation in their primary tongue.

You already know that efforts at corroboration are a hallmark of forensic evaluations. One can ask the defendant/inmate if he knows of other sources of information, such as relatives or friends, who might help you understand him and his situation better. Contacting them may or may not require a release (usually not, since the evaluator has no clinician-patient relationship with the evaluatee), but it is helpful to ask the person to write down the names and phone numbers, along with a comment that he would like for them to talk with you. Such a document helps establish the evaluatee's intent and can be shared with the contact people (who may be reluctant to talk with you unless they know the evaluatee wants them to do so).

Talk with the lawyer who has retained you before contacting these additional people. There should be no problem, but remember it's the attorney's case, not yours. If, in some rare circumstance, the lawyer asks you not to talk with anyone else, consider it, while weighing the consequences (to the case, and perhaps to your ethics) of limiting your information sources. At that point, you may recommend that the lawyer allow the contact, discuss the caveats that your report or testimony will contain if it is refused, or even withdraw from the case, but do not make contact against the lawyer's wishes.

At the end of the interview, many evaluatees ask about one's results or opinions. Dr. Park Dietz, a well-known forensic psychiatrist, advocates telling many defendants/inmates what he thinks, in general terms, thus fostering credibility and mutual respect and avoiding later surprises. I disagree, and usually say something like "I haven't finished my evaluation—your lawyer will have all the information soon." I usually have not come to a firm conclusion by the end of an interview, and do not wish to undermine either the evaluatee's feelings or my credibility with him if my final opinions are different (and I will not knowingly lie to him). Second, I try not to express "opinions" to *anyone* informally, since they may be premature, misinterpreted, or misquoted in some way that might harm the case. Third, my client is the attorney, not the defendant or inmate. Important communication about the future of the case, strategies,

optimism, or pessimism should come from the person's lawyer, not the evaluator.

SAFETY

You are unlikely to be knowingly placed in an unsafe circumstance in a correctional or forensic facility; that's part of the purpose of the rules discussed in the section on "Setting" above. Nevertheless, please use common sense when interviewing people who have a history of violence or instability, a reason to harm you or take you hostage, or both. Regardless of the facility rules, do not allow yourself to be out of sight or earshot of help, even when the evaluatee is shackled. This applies to tough, 300-pound interviewers as well as diminutive ones.

If the choice is between safety and privacy for the interview, don't be macho. And the security staff are your friends; be nice to them.

WHAT IF YOU DON'T LIKE THE LAW?

For most forensic professionals, our views on things like the death penalty or whether or not states should allow special sex offender commitment are not so overwhelming that they threaten our logic and objectivity (that's part of being a "professional"). One may think drunkenness is a bad thing, and form some premature opinions of people who drink a lot, and still be able to set that feeling aside when considering whether or not an individual drinker is responsible for some alleged crime. (Judges rarely recuse themselves from death penalty cases just because they have a personal view about the philosophical issue.)

Having said that, when an evaluator's personal view is so strong that it is likely to interfere with objectivity and judgment, then he or she should either decline involvement or make that bias known to the retaining attorney (the American Psychiatric Association and the American Academy of Psychiatry and the Law recommend this as well). I don't think it is necessary to announce one's philosophical views to anyone else (in court, for example) though some experts do. The other side's lawyer is free to ask about bias or conflict of interest, and the expert should answer truthfully.

THE LAST WORD

Safety first. Press for what you need. Be objective.