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Special Feature Article

Case Report in Forensic Psychiatry

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Abstract

Clinical psychiatry is for the patient, whereas forensic psychiatry is for society. As forensic psychiatrists should adhere to the principle of honesty and strive for objectivity, forensic psychiatric examinations proceed in an ethical space different from clinical medicine. Therefore, in case reports of forensic psychiatry, receiving consent from the subject is only the first step, and decision-making is required for resolution of the conflict between the desire for truth disclosure and the protection of stakeholders, including the subject.

Keywords : forensic psychiatry, expert witness, case report, ethics

Introduction

The *"Guidelines for the Protection of Privacy in Medical Papers and Presentations Including Case Reports"* (9) issued by the Japanese Society of Psychiatry and Neurology acknowledges the marked value of case reports, stating that "case

reports have contributed to the progress of medicine and medical care and played an important role in improving the health and welfare of the public." However, it also cautions that "case reports often contain information on diseases of specific individuals and their treatment

details. In such cases, the report must take care to protect privacy and prevent the identification of individuals, and in principle, consent must be obtained after sufficient explanation and understanding."The "value" is focused on the contribution to society, or the "public" aspect, while the "caution" is focused on the protection of the individual, or the "private" aspect. Human behavior, not only in case report but also in scientific research in general, is conducted in the presence of a conflict between public and private, and ethics; to simplify it without fear of misunderstanding, is a situation that occurs with a balance between public and private.

Criminal justice is a system that imposes punishment that is harmful to the individual for the benefit of society 5), and this is where the conflict between public and private is most vividly manifested. Moreover, it is accompanied by the utmost severity. The court must always render a verdict, and it is not permissible to postpone a conclusion on the grounds that the case is difficult to solve. The sentence can even be the death penalty, and the results of a psychiatric evaluation, if accepted and the court finds insanity, could even turn the death penalty into an acquittal. The purpose of this paper is

to make a modest proposal for case reports in general medicine through a discussion of case reports in the world of forensic psychiatry, which involves such an extreme situation.

I. The Uniqueness of Forensic Psychiatry "Cases"

Forensic psychiatry is a broad term that refers to everything at the interface between law and psychiatry, but the "cases" in this paper are limited to subjects of criminal psychiatric evaluation. The subject is the "suspect" if the case is before indictment, and the "defendant" if the case is after indictment, but in this paper, the "defendant" is used to avoid the complexity of the description.

1. The subject is a defendant

The most important ethics required of an expert witness is to maintain fairness and neutrality. Expert opinions are sometimes requested by the court, and sometimes by the prosecutor or defense counsel. Since a trial is a dispute, each client has his or her own position and desirable outcome. However, the expert witness must maintain fairness and neutrality, regardless of the source of the request 1). This may seem obvious, but there is already a conflict with medical ethics. In medical care, there is the "no harm" principle, which

states that one should never do anything harmful to the patient. However, in the case of psychiatric evaluation of a defendant in a criminal case, if it is concluded that the effect of the mental disorder on the criminal act is small, the sentence will be more severe. Here, for example, to draw a conclusion that the sentence should be lightened based on the judgment that "treatment is preferable to punishment for the patient" may be in accordance with the "no harm" principle, but it would be an act that violates the ethics of expert witness. Although the final determination of criminal responsibility is made by the court and not by the expert witness, the conclusions of the expert testimony can often predict the court's decision to some extent. Therefore, although the expert witness has the potential power to influence the conclusion of the trial, that power should not be used for the benefit of the defendant. Thus, from the very beginning, forensic psychiatric evaluation is governed by rules that are different from those of medicine.

2. Important personal information has already been disclosed

Although the aforementioned academic guidelines 9) clearly state that care should be taken to prevent identification of individuals, in major

cases, the real names of the defendant are often published in the mass media immediately after the occurrence of the crime. The trial is naturally conducted in a manner that discloses the real names of the defendant, so that the observers can learn about them, and the judgement documents are often officially published on the Internet, so that anyone can read them at any time, although only the real names are withheld. In addition, details of court cases are even published in legal journals.

What are the ethics of reporting a case in such a situation, and how is it the same as or different from reporting a clinical case? I would like to begin by drawing from my experience of reporting case of a defendant.

II. Case A - Large Discount Stores Arson Case 6)16)17)-

This case occurred in Saitama Prefecture in December 2004, in which three store employees were burned to death. The case was widely reported in the mass media, and the suspect (later defendant), a 47-year-old woman, reportedly stated that her motive for setting the fire was "resentment over being accused of shoplifting," and "relieving anger over being dumped by a man." The author was commissioned by the court to

conduct a psychiatric evaluation of the defendant. The following is a summary of the process.

1. Mental evaluation (July to November 2006)

The defendant was originally a diligent and honest woman, but her personality began to change around the age of 40, and she stopped working and began to lead an unrestrained life. Atrophy of the frontal lobe was observed, which was inappropriate for her age. The following are excerpts from the conclusion of the expert opinion:

(1) The defendant shows cognitive decline, which has influenced each of the offenses in this case.

(2) This cognitive decline is related to the atrophy of the defendant's brain.

(3) The cause of this brain atrophy could be frontotemporal dementia, but this cannot be confirmed at this time.

2. Expert witness examination (December 2006)

The expert witness examination at Saitama District Court was reported in the media as follows 2):

"The expert opinion found that 'the defendant had cognitive decline, which influenced her criminal behavior,' and (omitted) the court ruled that the defendant had the full culpability at the time of the crime."

3. District court judgment: life imprisonment (March 2007) 16)

In the judgment, the opinion of the expert witness (the author) was stated as "the defendant's brain showed significant atrophy for her age and her cognitive function was impaired, and this cognitive decline influenced the crime in terms of reduced inhibition," but there was no mention of frontotemporal dementia. The newspaper report 3) emphasized the court's finding that the defendant "tried to relieve her frustration of not being able to see her former partner by setting a fire and took advantage of the fire to steal merchandise," and there was almost no mention of the defendant's criminal responsibility.

The defendant was dissatisfied with the judgment and appealed.

4. High Court Decision: Appeal dismissed (May 2008) 17)

The following judgment was reported in the media: *"The defendant committed the crime to relieve her frustration of not being able to see her former partner, and there were no extenuating circumstances to her motive. The result of repeated extremely dangerous acts was serious."* and *"Although the defendant's judgment was impaired, her motive and preparation for the crime were reasonable and she had the full culpability"* 4). Subsequently,

the appeal was dismissed and the judgment of the District Court became final.

5. A commentary was published in "*Hanrei Times*" (July 2009), a legal journal, along with the judge document 11).

The grounds for the high court's finding of full culpability were: (1) no significant brain atrophy and (2) reasonable understanding of the purpose of arson.

6. Submitted as a paper 7)

At the time, the author felt that this case was extremely valuable in discussing the relationship between the impairment of ethical and moral functions seen in frontotemporal dementia and criminal cases, not to mention looking back on it now. However, not only media articles but also the judge document largely missed the medical points, and some of the judgments were even recognized as erroneous 6). The author therefore came to the conclusion that it is not only scientifically meaningful but also socially obligatory to publish the truth in the form of articles. On the other hand, there was also the conflict of whether it was really permissible to report the defendant who had been subjected to a psychiatric evaluation. Since this is a major case where the defendant's real name had already been reported by the media, withholding the

name in the paper does not make her anonymous. Although the author obtained a large amount of detailed data on the subject, being far greater than that of normal clinical cases, they were provided by the court for the purpose of psychiatric evaluation, and not as material for the paper. Given these facts, it would seem that it would not be permissible to make the paper, but at this point, a great deal of information about the defendant had already been publicly disclosed to the media and officially in the courts. Therefore, I concluded at the time that it would not be a problem if the facts in the paper were kept within the scope of such publicly available information and if I could add some discussion to the information, and decided to submit the paper.

The first journal replied, "Obtain consent from the person herself." At that time, the defendant was serving a life sentence in prison, and it was virtually impossible to obtain her consent. I decided not to submit the manuscript to this journal.

The second journal responded with a request to submit brain images. Although I had brain images of the defendant, I considered it inappropriate to publish the brain images without her consent. I also decided not to submit the manuscript to this journal.

A third journal accepted the

submission with no mention of the above 7).

Thus, publication of the paper was realized seven years after the incident. Although my thoughts and feelings during this process were diverse, here, I would like to discuss only those matters related to consent that are directly relevant to the theme of this special issue.

The first question is whether consent of the subject is required for a case report based on information that has already been made public. Moreover, in this case, the disclosure of the truth was meant to correct misinformation that was being spread in society (When an incident is reported in the media, it is not limited to this case). If this is the case, it may even be considered that the publication of the paper is in the defendant's own interest.

The second question is whether the defendant's consent is valid. At the time of this case, the author did not consider the need to obtain the defendant's consent to publish the paper, but recently, the author has been trying to obtain a defendant's consent when it is deemed necessary, and in many cases, consent has been obtained smoothly. However, can a defendant refuse a request from an expert witness? This is not limited to forensic case reports. Although it is a cliché to state in medical research consent documents that there

are no disadvantages to refusal, the subjects involved may feel that they will suffer some disadvantages if they refuse. This is even more so for a defendant whose fate depends on a psychiatric evaluation.

The third question is whether the consent of the parties involved is necessary. In a criminal case, not only the defendant but also his/her family, victims, and many other people are involved. Even if their names are withheld in the paper, it is relatively easy to identify them in a major case. It may be necessary to obtain the consent of these people as well.

Despite these challenges, those who know the truth have an obligation to make it public. It would be rather unethical to remain silent. That is what I thought at the time. The author of Case B below expresses it more clearly.

III. Case B - Virginia Tech Shooting –

On April 16, 2007, 33 people, including faculty members and students, were shot and killed on a university campus in the United States. The suspect (who committed suicide at the scene) was a 23-year-old male student at the university. Shortly after the incident, details about the student were published in a book, entitled: *"No Right to Remain Silent"* 14). The author of the book was one of the professors who

supervised the student before the incident, and in the book she expresses her deep anguish as follows:

Better to remain silent, people whispered, afraid of attorneys, afraid of the media, afraid of jeopardizing the rights they treasured, afraid of what it would cost.

Nevertheless, she describes her decision to publish as follows:

If I remained doggedly silent, how I would bear it if some other tragedy on the scale of the one we had endured (or even greater, perhaps) occurred in the United States or elsewhere?

It was a form of self-preservation that made the author hesitate to publish. You could say it was self-protection. However, the sense of discomfort and guilt about covering up the truth outweighed it. A strong desire to disclose the truth. This is a common feeling shared by those who have learned the whole story of the case. This feeling may be widely understood. However, is it respected in the public sphere as well? Case C is a valuable case that actually tested this.

IV. Case C - Nara Home Arson, Triple Murders of Mother and Children 8)12)15)-

This incident, which occurred on June 20, 2006, perpetrated by a 16-year-old boy, is rather well-known as the "case

of leakage of confidentiality of an expert witness." The expert witness was prosecuted and convicted of leaking confidential information under Article 134 of the Penal Code (Table) because his expert documents were leaked to the media and published.

In the first trial, the defendant (the expert witness) claimed the following 8):

C had the intent to kill the victims (stepmother, younger brother, and younger sister), and there were repeated reports that C was a murderer, but as the defendant proceeded with his psychiatric evaluation as C's expert witness, he came to know that C had no intent to kill. In order to correct the public perception that had been spread by false news reports and to protect C's future, he thought it necessary to reveal the truth.

In other words, he claimed that "to reveal the truth" constitutes "*justifiable grounds*" as stipulated in Article 134, Paragraph 1 of the Penal Code.

In response, the court made the following judgment (underlining by the author)8):

"The defendant, as C's expert witness, was obliged to give an honest appraisal from a neutral standpoint and should have fulfilled his duty in the appraisal. However, regardless of the defense

counsel's activity policy and the thoughts of the guardians of the boy, he ultimately committed each of the crimes with his own selfish intentions, and he cannot avoid being accused of being thoughtless and of mixing public and private matters. There is no particular motive that should be taken into consideration."

It is a harsh judgment that "to reveal the truth" in order to "correct public perception" and "protect C's future" is nothing more than a "*selfish intentions*" of the defendant (expert witness), who is "*thoughtless and of mixing up his public and private matters*." As mentioned earlier, in writing the paper on Case A, the author thought that it is the duty of those who know the truth to disclose the truth, but if the case is prosecuted and brought to trial, will that be judged as "*own selfish intentions*" as well? Since Case C involves a confidential information leak, the meaning of which is very different from that of publication in a paper, and the fact that it is a juvenile case, a major difference, it cannot be discussed at the same level as Case A. However, since this ruling is a judgment on Article 134(1) of the Penal Code = doctor's duty of confidentiality, it is also inappropriate to say that it is irrelevant to the contrary.

The case was closed when the

Supreme Court dismissed the appeal. In the decision of the Supreme Court, an important interpretation of "*a person's confidential information*" in Article 134, Paragraph 1 of the Penal Code was given (underlining by the author)¹⁵⁾:

"The 'person's confidential information' should include not only the confidential information of the person to be appraised but also the confidential information of persons other than the person to be appraised known to the expert witness in the course of performing the appraisal. Therefore, it is understood that a person to whom these secrets are divulged is a "person harmed by a crime" as defined in Article 230 of the Penal Code and has the right to sue. "

Therefore, it is understood that a person to whom these confidential information are divulged is a '*person harmed by a crime*' as defined in Article 230 of the Code of Criminal Procedure and has the right to sue.

Although the court's ruling that "*the crime of revealing person's confidential information includes the confidential information of a person other than the person to be appraised*" takes the form of a point about psychiatric evaluation of a defendant, it should be recognized that it can be applied to all case reports in medicine, since it is a ruling on Article 134-1 of the Penal Code, i.e., a

physician's duty of confidentiality. According to this Supreme Court's decision, the answer to the question of whether the consent of the person concerned is unnecessary, which was presented in the argument concerning the consent in Case A, can be interpreted as "the consent of the person concerned is also necessary". In case reporting, even if you have obtained the consent of the patient, you may be accused of revealing confidential information by people around the patient.

However, it is not realistic to state that all case reports must have the consent of the parties involved, and it is impossible to determine the extent to which the parties are involved. Is it best, then, not to report cases in order to avoid the risk of prosecution? However, isn't that an avoidance of a social obligation? Isn't it unethical for those who know the truth to remain silent? Conversely, is it considered a mixture of public and private, own selfish intentions? The discussion goes in circles and continues like an endless loop.

V. Personal Opinion

Since there are no answers in an endless loop, I would like to present a modest personal opinion. Let us return to the starting point of the case report.

The case report has marked significance, not to mention the *"Guidelines for the Protection of Privacy in Medical Papers and Conference Presentations Including Case Reports"* 9) issued by the Japanese Society of Psychiatry and Neurology. If we look at the "public" aspect, i.e., contribution to society, there is no option to choose not to report a case. In addition, the desire for truthful disclosure drives people to publish their cases. On the other hand, it is unacceptable to neglect to consider the parties (not only the person to be appraised) to whom the case is being reported. The greatest consideration is the choice not to publish. This is where the sharp conflict between "public" and "private" arises (see figure). Various factors influence this conflict, but what should not be underestimated is the reality that the decision to report a case may also be influenced by the desire to gain research performance. The decision not to report a case is also influenced by the desire to protect oneself from risk. Neither performance gains nor self-protection are in and of themselves reprehensible. However, if the desire for performance gains outweighs the consideration for the parties involved, or if the desire for self-protection outweighs the desire to disclose the

truth, then this is not an acceptable attitude for a physician or scientist. Ethics exists in balance between public and private, and various factors are involved in this balance. The author believes that the attitude required when considering a difficult problem with no correct answer is to face each of these factors, and then take the most ethical action that one can be sure of.

Conclusion

In the case of Ikeda Elementary School attached to OSAKA Kyoiku University, where 8 elementary school children were murdered on June 8, 2001, 13) the defendant's expert witness made the unprecedented decision to publish the full text of his expert opinion 10). In the foreword to the book, entitled: "*Psychiatric Evaluation of Mamoru Takuma*," the expert witness wrote 3 reasons for publishing the book, as follows:

1. I believe that the validity of the diagnosis should be verified by psychiatric clinicians and specialists.
2. It is necessary to review what psychiatric treatment should have been provided for Mamoru Takuma before the murder case.
3. I think we should confirm that the Medical Treatment and Supervision Act was enacted and enforced after this murder case.

In this moderate description, we can read the strong desire for disclosure of the truth by this forensic psychiatrist, who passed away shortly after the publication of this book.

The severity of a disease does not necessarily correlate with the degree of unhappiness as a human being. Some people lead happy lives even if they have serious illness, while others lead unhappy lives even if their illnesses are mild. However, the mentally ill accused in serious criminal cases are those who, because of their serious illness, deprive others of happiness, and are also strongly blamed, and are the most serious in terms of both severity and unhappiness. If they are not published as case reports, the truth will remain undisclosed, and the same misfortunes will inevitably be repeated. Who can call such a publication based on such an intention as "*selfish*" and "*mixing public and private matters*"?

There are no conflicts of interest to disclose in connection with this paper.

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Table. Article 134-1 of the Penal Code

<p>When a physician, pharmacist, pharmaceuticals distributor, midwife, attorney, defense counsel, notary public or any other person formerly engaged in such profession disclose, without justifiable grounds, another person's confidential information which has come to be known in the course of such profession, imprisonment with work for not more than 6 months or a fine of not more than 100,000 yen shall be imposed.</p>
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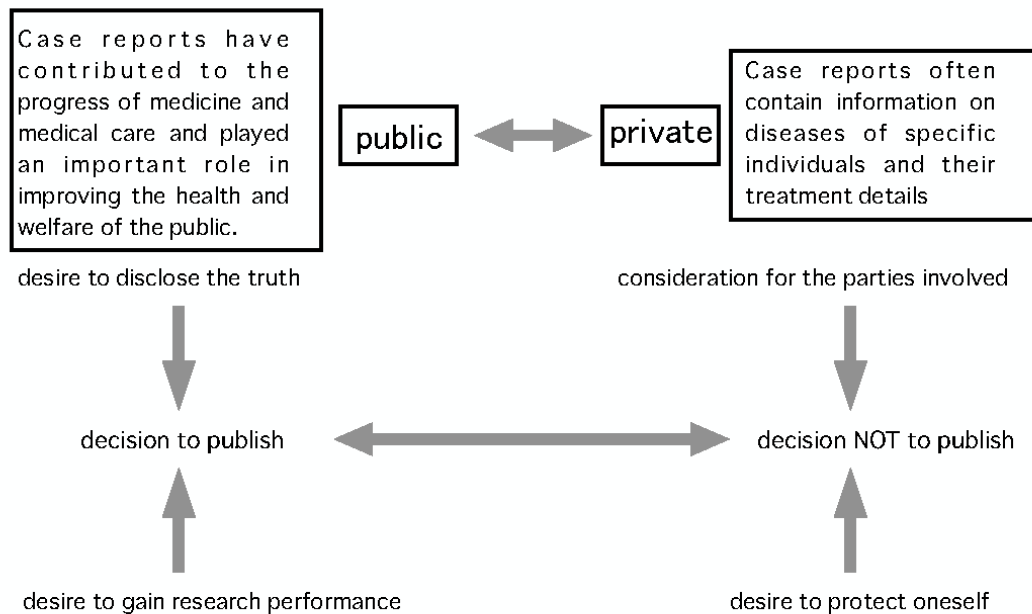


Figure. Conflict between public and private in case report

Case report is a situation where the public and private are in conflict. Factors that influence the decision to publish a case include the desire to disclose the truth and the desire to gain research performance. Factors that influence the decision not to publish a case include the desire to protect oneself as well as consideration for the parties involved. The decision to publish or not to publish is made with a balance between these two factors, but the desire for performance should never overcome the consideration for the parties concerned; nor should the desire for self-preservation overcome the desire for truthful disclosure.