

Editorial: Is Forensic Psychiatry Ethical?

When Alan A. Stone, MD, gave his luncheon address, "The Ethics of Forensic Psychiatry: A View from the Ivory Tower," at the Thirteenth Annual Meeting of the Academy in New York on October 22, 1982, there was an initial response of chagrin and hurt. During the brief discussion period, most of the comments from the audience were defensive and argumentative. The cry went out for a response, thus this special *Bulletin* issue on Ethics was stimulated, although consideration for a special "Ethics" issue had been on the agenda of the editorial board for some time.

As the smoke cleared and time allowed a less defensive look at ourselves and our work, many of us realized that Dr. Stone had raised some very important issues we must confront if psychiatrists are to continue to testify before the courts and thus to expose themselves to the media and the ensuing professional and public criticism.

It appears both psychiatrists and the public were incensed by the results of the decision of the jury in the *Hinckley* trial. I believe society is rightfully concerned about crime and violence and has placed the blame on the insanity plea and on psychiatrists. I thought the psychiatric testimony in the *Hinckley* case, with one possible exception, represented the most responsible, well-considered psychiatric testimony I have heard. Yet some psychiatrists have taken a *mea culpa* position and appear ready to crucify those who testify in court.

Such scapegoatism, which of course will do nothing to lessen crime and violence, may be understandable.

I do not believe Stone's comments were stimulated by these events alone, as he has been troubled by our "interface" with law for some time. The American Psychiatric Association also is concerned as evidenced by the establishment of a Task Force on psychiatry's role in the sentencing process, whose report recently has been approved by the Board of Trustees.

Regardless of the reasons for the current turmoil about the insanity plea and psychiatric testimony, the criticism, problems, and dilemmas must be looked at and responses considered. The role of the psychiatrist in the courtroom is a difficult one perhaps similar to that of the public health physician, the industrial physician, the college physician, or any other role of a physician where there is a departure from the usual doctor/patient relationship. Fortunately for those others, they are not exposed to the media to such an extent as is the testifying psychiatrist. Because we are so vulnerable, we need to look carefully at what we do and how we do it, not only because of public misunderstanding but also, and more importantly, because of our concern that we harm either our patient or psychiatry.

In order to have a full look at Dr. Stone's comments, I asked several of our most experienced and thoughtful colleagues to respond. The version of Stone's paper published here was reviewed by them. It is a slightly revised version from his speech and has appeared in his monograph, *Law, Psychiatry, and Morality*, recently published by the American Psychiatric Press, Inc.

Andrew Watson, MD, sees no reason to apologize for "good clinical prac-

tice" and believes this is the best we have to offer. If the law finds us helpful, he believes that we should continue and that this can be done without harm to anyone.

Paul Appelbaum, MD, defends his "truth" rule: "Truth, insofar as that goal can be approached, from both a subjective and an objective point of view" and expands further on this concept. Truth based on the above should meet the needs of the courts and Dr. Stone's ethical demands.

Herbert Modlin, MD, believes the "double-agent bug-a-boo needs to be demythologized." He believes we must recognize "in the legal arena the client is not a patient, but a plaintiff/defendant." He does not think the role of the psychiatrist in the legal arena is either impossible or harmful.

Howard Zonana, MD, also believes we have something useful to say that is worthy of the court's attention. That we disagree about diagnosis is true, but what degree of validity should be required? Is not our level of agreement now (DSM III) similar to the rest of medicine? He points out that much of our bad press may be the result of the lack of training of psychiatrists for forensic work. He proposes more training and the establishment of clear ethical guidelines to prevent the inherent pitfalls in testifying.

Robert Sadoff, MD, who probably has testified in more trials than any of us, agrees that there should be concern lest we overstep our boundaries and cause harm. Nevertheless he believes we can function adequately and ethically by being careful. He discusses nine different specific areas encountered in the practice of forensic psychiatry and offers sage advice to ensure ethical practices.

Barbara Weiner, JD, responds from the standpoint of an attorney who works with forensic psychiatrists. She believes forensic psychiatrists are needed and they "can serve the needs of the patient and society at the same time, although maybe not in the same case."

J. Richard Ciccone, MD, and Coleen D. Clements, PhD, have moved to the trenches to respond to Stone. They present a framework of applied clinical ethics for the clinician, which should be considered seriously by philosophers who would impose their structures on us.

Seymour Halleck, MD, who has been concerned about these issues in several areas such as commitment and sentencing, does not approach Stone's concerns directly but views the issues from the standpoint of the commitment of a dangerous patient. He believes that while we cannot control the conditions by which we must function in forensic roles, we can define conditions under which we are likely to create the least harm and do the most good.

The American Academy of Psychiatry and the Law is concerned with the ethical behavior of our colleagues. We know that we are in an area with many pitfalls. For several years this Academy has been attempting to develop guidelines to help buttress the American Psychiatric Association's ethical standards in areas of particular concern to forensic psychiatry. Henry Weinstein, MD, presents an excellent review of the efforts of the Ethics Committee of the Academy and its present status.

There are no simple solutions to these very troublesome problems. An impor-

tant part of the problem is that we are faced with trying to fit our ethics into an entirely different system, the law. These articles have not resolved all the problems Stone has raised. I hope they have cleared some of the smoke and defensiveness and, at the least, opened our minds further to the problems and offered some solutions.

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Guest Editor

