Forensic Psychiatry—A Specialty

SEYMOUR POLLACK, M.D.*

The field of forensic psychiatry implies a distinction between it and other areas of psychiatry. Whether this field can be so clearly staked out as to be delineated as a subspecialty of psychiatry is the subject of this brief paper. I propose (1) to examine the question of whether it is justified to speak of forensic psychiatry as a subspecialty; (2) to explore the definition of forensic psychiatry presented by others and their outlines of the parameters of the field; and (3) to offer my views on the definition and boundaries of forensic psychiatry and its future in American psychiatry.

The roots of forensic psychiatry as an area of special interest and concern long antedate modern psychiatry. In fact, American psychiatry to some extent may be considered to have developed from its forensic past.

Historical Definitions of Forensic Psychiatry

Isaac Ray's definition of the field subsequently designated as forensic psychiatry was offered in his pioneer work, *A Treatise on the Medical Jurisprudence of Insanity*. This was first published in 1838 and the definition has endured. The text concerns itself with the "legal relations of the insane,"[1] by which he means *the legal inferences and consequences of mental disease* (italics added). Quoting Ray from his Preface, "The main object which he, the author, proposed to himself was to establish the legal relations of the insane in conformity to the present state of our knowledge respecting their disease. In furtherance of this object he has given a succinct description of the different species of insanity and the characters by which they are distinguished from one another, so that the professional student may have some means of recognizing them in practice, and thence deducing, in regard to each, such legal consequences as seem warranted by a humane and enlightened consideration of all the facts."[2] In more recent years, forensic psychiatry has been defined as "that branch of psychiatry dealing with the legal aspects of mental disorders."[3] Similarly, Winfred Overholser, late superintendent of Saint Elizabeths Hospital, Washington, D.C., defined forensic psychiatry as "the application of psychiatric knowledge and the techniques to legal procedures"[4] and noted in his definition the wide variety of topics covered by this field such as "wills and contracts . . . (to) disposition of prisoners after conviction."[5]

In his text on *Forensic Psychiatry*,[6] the late Henry Davidson likewise defined forensic psychiatry by its *content* without presenting a more explicit definition of the area. On the basis that this field of legal medicine was self-explanatory or self-defined, his manual was "written as a psychiatric-legal guide"[7] for psychiatrists and others who were involved with legal issues related to their practice or (psychiatrists or lawyers) whose mentally ill patients or clients had become involved in legal matters. Legal psychiatry, or forensic psychiatry, is sometimes considered (i.e., defined) as a branch of legal medicine, although the latter as a special field of medicine does not exist in

* Professor of Psychiatry and Director, Institute of Psychiatry, Law and Behavioral Science, University of Southern California School of Medicine, Los Angeles, California.

the United States.[8] What is actually meant by this is that legal psychiatry can be considered to include every aspect of every psychiatric-legal problem of concern to the psychiatrist or attorney.

No significant differences can otherwise be found among the implicit or explicit definitions of forensic psychiatry offered in the many works reviewed by this author. All define the area as one relating psychiatry to law, including the many different topics that are involved in this relationship. In this author's opinion, this global, all-encompassing definition of forensic psychiatry is responsible for much of the conflict about the field of forensic psychiatry, in particular because of unclear boundaries that surround the field.

In 1971 I advanced a definition of forensic psychiatry based upon a fundamental premise differentiating one system from another. Systems can be differentiated, one from another, on the basis of their different ends or goals. The clearest definition of forensic psychiatry can be made on the basis of the end to which this field is directed, an end that sharply defines the field and clearly stakes out the area. It is an end implied by most authors but explicitly avoided in definition. In other words, it is possible to differentiate the subfield of forensic psychiatry from the more global area of psychiatry and law on the basis of the ends or goals to which these different endeavors in psychiatry and law are directed.

Proposed Definition of Forensic Psychiatry

The category, psychiatry and law, can be considered the broad, general field in which psychiatric theories, concepts, principles, and practice are applied or related to any and all legal matters. This broad category has two subdivisions; the first relates to forensic psychiatry and the second to other areas of psychiatry, such as social psychiatry, administrative psychiatry, etc.

Forensic psychiatry in this context is limited to the application of psychiatry to legal issues for legal ends, legal purposes. Psychiatric evaluation of the patient is directed primarily to clarifying the relationship of psychiatric material to legal issues in which the patient is involved for the specific purposes of the law; and psychiatric-legal psychiatric consultation is concerned primarily with the ends of the legal system, i.e., with the ends and values of civil and criminal justice, rather than concerned with the therapeutic objectives and values of the medical system.

In the second subdivision, consisting of social psychiatry, community psychiatry, administrative psychiatry, etc., all such psychiatric involvements are directed toward the customary goals of psychiatry and influenced by the traditional value system of psychiatry, i.e., mental health. Although concerned with the legal issues of patients because such matters influence the patient's problems and response to treatment, all such doctor-patient transactions are dominated and controlled by the traditional end of psychiatry, that is, the goal of healing or otherwise helping the patient.

This second subdivision includes such diverse involvements as teaching programs in psychiatry for judges, attorneys, paralegal professionals, administrators, legislators, and others. It incorporates varied facets of administrative psychiatry as well as correctional psychiatry. It also embraces the psychiatric evaluation and treatment of persons involved with varied civil and criminal matters. Such persons have legal problems as varied as those encountered in family court and in social welfare agencies. They may be couples involved in domestic relations disputes or families with questions about adoption. They may be patients with problems of alcoholism, drug abuse, narcotic addiction, or juvenile offenses. They may be self-referred, or referred by attorney, court, or agency. They may be private patients or their evaluations paid for by public funds. But all of these persons are patients in the traditional sense within the framework of the psychiatrist-patient ethic.

For all of these patients the psychiatrist may be concerned with providing either direct services of evaluation for treatment, or with giving treatment, or he may be involved with indirect services of consultation with agency staff. Both direct and indirect services are primarily treatment oriented, however, and are concerned with improving the mental well-being of the patient, or the group, or the mental health of the community.

Although the field of forensic psychiatry is considered by many authorities to encompass the entire arena of psychiatry and law, for this author the application of psychiatry for legal purposes and ends significantly differentiates the subdivision of forensic psychiatry from all of the other fields of psychiatry as well as from the broad area of psychiatry and law.[9]

To this author it is the legal end of forensic psychiatry that provides its special flavor and distinctive characteristics. In other words, forensic psychiatry, like all other forensic sciences, directs itself to the ends of law. It holds to the same ends as law. Its objectives are legal, not medical. It is controlled by the legal rather than by the medical value system, i.e., it is dominated by the overriding values of the rule of law rather than by the therapeutic philosophy of medicine.

It is true that significant legal issues are present in administrative psychiatry, hospital psychiatry, community psychiatry, and clinical psychiatry as well as many other aspects of the general practice of psychiatry. When the psychiatrist deals with these legal issues as they relate to treatment ends, then the subject matter falls into the broad area of psychiatry and law. When the legal ends are primary, the subject matter is properly one of forensic psychiatry. In other words, for the many different topics and issues in which legal matters carry significance for psychiatry, I consider that the psychiatrist's concern about them reflects his interest in their effect upon the mental health of his patient, and his interest in their influence upon his treatment and treatment goals. This is so when the psychiatrist involves himself in the psychiatric education of legalists, whether attorneys or judges, or of law enforcement staff, or correctional personnel; it is so when he evaluates and treats patients who are also involved in civil or criminal legal matters; it is so when he exercises professional or political influence upon legislators dealing with civil and criminal law, and especially mental health law, for the benefit of the mentally ill; and it is so when he is concerned with the legal implications and consequences of psychiatric practice. All of these varied topics, issues and subject matter can properly be included in the category of psychiatry and law when the psychiatrist is involved with them with a therapeutic objective rather than with a legal goal in mind. Even if the goal is to initiate or change a law, if the basic end of the law is believed to be improved mental health, i.e., if a therapeutic objective is present in the law and the value system of psychiatry is served by the law, then we are still *not* involved with forensic psychiatry. But were legal rather than therapeutic values to be served by the law or by the psychiatric involvement, then the input would be that of forensic psychiatry. In other words, it is their therapeutic goal and direction that excludes all of these varied activities from forensic psychiatry, not their content.

Criticisms of Forensic Psychiatry

It is, however, this distinctive feature of forensic psychiatry that draws to it stinging criticisms from leading figures in both disciplines of psychiatry and law. Bitter critiques have come from Thomas S. Szasz,[10] Karl A. Menninger,[11] and Seymour L. Halleck,[12] as well as censure by Lawrence A. Kolb in his 1971 Oskar Diamond Memorial Lecture and in the more recent critical articles by Alan Stone.[13]

Many attorneys and judges feel equally strongly that psychiatry and psychiatrists should not relate their material to legal ends. For many legalists who are negative to psychiatry, this position, of course, is no more than an expression of their extreme attitude. Of those legal figures who are more positive toward psychiatry, however,

Judge David L. Bazelon has been most articulate in advancing the position that the psychiatrist should not apply his material to legal issues and certainly should never apply his material to legal ends.[14]

To this author the need to define the field of forensic psychiatry by its ends is so important that he has identified his first principle of forensic psychiatry as the "Principle of Legal Dominance,"[15] the concept that in the forensic psychiatry inquiry the legal ends and values are paramount. Opposition to this fundamental concept more than any other single factor may hinder the development of forensic psychiatry as a specialty. And yet, only this teleologic definition of forensic psychiatry adequately defines it as a subspecialty of psychiatry.

Social Obligations of Psychiatry

There is little need to highlight the societal obligation that psychiatry has to apply itself to the ends of the law, its duty as a socially concerned system, as a medical-social discipline, to direct itself not only to its own humanistic healing goals but also to the ends of law in order that our society can function more equitably under the rule of law. And, there is no need to underscore the fact that it is in the limelight of trial issues in the courtroom arena that psychiatric theories and practice become most visible. It is true that such exposure at times appears to challenge the very basis of psychiatry; but in my opinion if psychiatry cannot withstand such challenge, it will probably not endure. To this author, therefore, forensic psychiatry presents itself as the cutting edge of psychiatry in its interface with social-legal issues.

Forensic Psychiatry As An Important Topic In American Psychiatry

Forensic psychiatry, as a special field of psychiatry, can thus be defined as an interface interdisciplinary subspecialty directed to the ends of law as these ends represent the philosophy of the rule of law. That forensic psychiatry is considered important enough a topic in American psychiatry to be considered a special field is demonstrated by the fact that legal psychiatry merits a chapter in almost every textbook on psychiatry. Psychiatric texts and compendia usually include at least two or three additional chapters on topics relating psychiatry to law and legal issues such as commitment of the mentally ill, alcoholism, dangerous drug abuse, narcotic addiction, and the antisocial personality. Each issue of *Psychiatric News* usually highlights recent appellate court rulings effecting psychiatry as well as additional articles on subjects relating psychiatry to substantive or procedural aspects of law; and letters to the editor are frequently directed to psychiatric-legal matters which arouse most concerned dialogue.

This author's review of articles published in the *American Journal of Psychiatry* from 1968 through 1973 revealed that 18% of all articles in this journal were on subjects in the field of psychiatry and law (as defined by this author) and an additional 7% of all articles were devoted specifically to forensic psychiatry (as defined above). In other words, 25% of the articles published in the *American Journal of Psychiatry* for these five years were concerned with psychiatric-legal matters.

With such ongoing interest in, and concern about, psychiatry and law as well as related topics, and with increasing emphasis on legal psychiatry, there should be no question about considering this area of psychiatry and law as one sufficiently distinctive at least to warrant its receiving special attention in psychiatric residency training programs even though it may not be considered a special field of psychiatry.

Forensic Psychiatry As A Subspecialty

On the other hand, there is no question but that forensic psychiatry is a distinct specialty insofar as it represents a special field of endeavor with its distinctive char-

acteristic of legal direction and ends. This author has pointed out in previous articles that the psychiatric-legal inquiry and interview as well as the psychiatric-legal report are significantly different from the psychiatric-medical inquiry and report, i.e., significantly different from customary psychiatric evaluations directed to treatment ends, and that such psychiatric-legal inquiry, evaluation, and report require special education and training to develop the necessary adequate skills for this work.

It is true that every special field of interest and effort is not necessarily a specialty in the medical sense. For this to eventuate, what must develop is a special course of advanced study, education, training, and supervised experience, with the advanced student ending as an accredited authority and skilled technician in dealing with this particular subject. Also, both public acceptance and professional accreditation of specialty status are requisite. Public acceptance of the need for the specialty is important, but even more important is the need for the specialty to have practical value to the practitioner, i.e., in an operational sense the specialty must be financially and economically viable to exist as a specialty field.

Psychiatrists' markedly increased involvement in forensic psychiatry, both in civil and criminal matters, during the past fifty years demonstrates the need for this field to become a subspecialty of the field of psychiatry. Practitioners in the field of psychiatry have become increasingly concerned with issues of civil rights, individual freedoms, commitment of the mentally ill, the right to treatment and the right to reject treatment, civil commitment of the quasi-offender, the juvenile and adult delinquent, sex offender, narcotic addict, drug abuser, and the alcoholic patient. The involvement of the psychiatrist has burgeoned in the areas of workmen's compensation, social security benefits, personal injury litigation, divorce actions, custody disputes, and a variety of other civil-legal matters, as well as in criminal-legal issues.

A number of associations directing themselves to psychiatry and law have recently come into existence. Throughout the country a few special training centers in psychiatry and law have developed. An advanced training program in Psychiatry and Law at the University of Southern California Institute of Psychiatry, Law and Behavioral Science has been operational for the past eight years, directing itself largely to increasing the knowledge and skills of the psychiatrist in forensic psychiatry.

With such movement of psychiatry into the legal arena, the societal necessity for specialists in forensic psychiatry is easily understood. American psychiatry is called upon to reply to this need by supporting the organization and structure of specialty training in this field and by the accreditation of a subspecialty in forensic psychiatry by our specialty board.

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2. Ibid.
3. Allen, Ferster and Rubin: *Readings in Law and Psychiatry*. Johns Hopkins Press, Baltimore, Maryland, 1968, (Psychiatric Glossary, p. 502).
4. Overholser, W.: Major Principles of Forensic Psychiatry, Chapter 95, in *American Handbook of Psychiatry*, edited by S. Arieti. Basic Books, Inc., N.Y., 1959, 2:1887.
5. Ibid.
6. Davidson, Henry: *Forensic Psychiatry*. The Ronald Press Company, N.Y., Second Edition, 1965.
7. Ibid., preface.
8. See, for example, Sagall, Elliot L., and Reed, Barry C., *The Law and Legal Medicine*. J. B. Lippincott Company, 1970, in which legal medicine is implicitly defined as all areas of medicolegal problems of concern to the practicing physician. And see the authoritative work by William J. Curran, *Law and Medicine. Text and Source Materials on Medico-legal Problems*. Little, Brown and Company, Boston, Massachusetts, 1971, a volume developed for

practicing attorneys and students of law in those areas of medical science, medical practice, and public health which are most significant to law, our legal system, and the practice of law in the United States today.

9. Pollack, S.: Principles of Forensic Psychiatry for Psychiatric-legal Opinion-making, Chapter in 1971 *Legal Medicine Annual*. Edited by C. Wecht, Appleton-Century-Crofts, New York, N.Y., 1971, pp. 270-271.
10. See Szasz's works on *Law, Liberty and Psychiatry*, Macmillan Co., N.Y., 1963 and *Psychiatric Justice*, Macmillan Co., N.Y., 1965, among his many books and articles advancing the position that the psychiatrist who directs himself to any legal end is either a willing or unwitting dupe of the legal system and an insidious agent of social control.
11. See Menninger's *The Crime of Punishment*, Viking Press, N.Y., 1968, among his many articles and books urging the psychiatrist to avoid the legal issues in the courtroom arena and to limit himself to treatment goals.
12. See Halleck's *Psychiatry and the Dilemmas of Crime*, Harper and Row, N.Y., 1967, in which Halleck presents his critique of the current psychiatric roles in the legal process.
13. See, for example, Stone's article on "Psychiatry and Law" in *Psychiatric Annals*, October 1971, Vol. 1, 2, and Dr. Stone's recent letter to the editor in *Psychiatric News*, July 4, 1973, in which he enjoins American psychiatry to reassert "its primary identity as a helping profession."
14. See, for example, Judge Bazelon's Appellate opinion in the Appendix to *Washington v. United States*, 390 F.2d 457 (1967) in which he states that the psychiatrist who testifies in court should remain the clinician. "You should not be concerned with [the] legal meaning [of mental illness] . . . What is desired in the courtroom is the kind of opinion you would give to a family which brought one of its members to your clinic and asked for your diagnosis of his mental condition and a description of how his condition would be likely to influence his conduct."
15. See Pollack, S., Psychiatric Consultation for the Court, Chapter in *Psychiatric Consultation*, edited by W. Mendel and P. Solomon. Grune and Stratton, N.Y., 1967. Also see, Pollack S., Principles of Forensic Psychiatry for Psychiatric-legal Opinion-making, cited *supra*; and Pollack, S., State of the Art of Forensic Psychiatry, in *American Academy of Psychiatry and Law Newsletter*, 1:3, April 1970; and The Psychiatrist as Expert Witness and Consultant in Civil and Criminal-legal Issues, USC Institute of Psychiatry and Law Manual by S. Pollack, (1973), for an explanation of these differences.