

# Dangerousness: A Mutating Concept Passes Through the Literature

Melvin G. Goldzband, MD

Following the dictum of Proust, the idea of dangerousness as a predictable attribute of individuals obeys the Frenchman's observation that the more things change, the more they stay the same. Certainly since the very early days of the American Academy of Psychiatry and the Law (AAPL) and its publications, discussions and articles have abounded about forensic psychiatrists and their problems in having to make predictions about dangerousness.

My own history with the AAPL reveals that the first meeting I attended was a special educational session with an emphasis on this very topic. The meeting was held in Atlanta over a delightfully juiced St. Patrick's Day weekend in 1973. Attendance was small compared with the current sessions, but the quality of discussion was high, and everyone participated enthusiastically with ideas and stories from their own experiences. Stan Portnow chaired a session on dangerousness in which Hank Steadman reviewed his

paper, "Implications from the Baxstrom Experience," and Jonas Rappeport and a guest attorney-speaker, Barry Swadron, responded and elaborated on the Steadman presentation. The Steadman paper was subsequently published in Volume 1 of the *Bulletin of the American Academy of Psychiatry and the Law* (AAPL Bulletin), dated July, 1973, under the pioneering editorship of Herb Thomas.<sup>1</sup> The next day's luncheon speaker was the President of the National Council on Crime and Delinquency, Milton Rector, who addressed the question, "Who are the Dangerous?"<sup>2</sup>

The entire issue, characteristically, was handled very well and provided a large measure of stimulation. Bob Sadoff, then President of the AAPL, led one discussion group and wondered if anyone could possibly provide a working definition of dangerousness. I rose to the challenge, as only a tyro could or would do, rushing in where angels would fear to present themselves. After rich discussion, the definition seemed to please most of the meeting attendees. So, further demonstrating my naivete, I also incorporated that definition in the first paper I ever read at an AAPL meeting (in Pittsburgh, October, 1973).

---

Dr. Goldzband is Clinical Professor Emeritus of Psychiatry and Director Emeritus of Forensic Psychiatric Training, School of Medicine, University of California, San Diego. Address correspondence to: Melvin G. Goldzband, MD, 4709 La Rueda Drive, La Mesa, CA 91941. E-mail address: mgoldzband@pol.net

When "Dangerousness" appeared in the December 1973 issue of the AAPL Bulletin (Volume 1, Number 4), I wrote:

Dangerousness is the quality of an individual or a situation leading to the potential or the actuality of harm to an individual, community or social order. It is inherent in this definition that dangerousness is not necessarily destructive (as "destructive" is commonly defined) although frequently seen as such by specific individuals or social orders threatened by such a quality.<sup>3</sup>

I elaborated on the definition, indicating that I intended it to be as subjective and wide-ranging as it seemed. It was noted in the article that many psychiatrists held more restrictive views, specifically referring to the capacity to perform severe physical harm to another individual, while others thought in statistical terms, conceptualizing the quality as a probability function. In his talk, Steadman had quoted the definition provided by the 1971 revision of the New York State Criminal Procedures Law: "An incapacitated person who is so mentally ill or so mentally defective that his presence in an institution operated by the Department of Mental Hygiene is dangerous to the safety of other patients therein, to the staff of the institution, or to the community. . . ." Steadman commented appropriately that the definition stated that a person is dangerous if he is dangerous! It was obvious that a better definition was needed. He eventually provided a definitive one in his chapter, "Predicting Dangerousness," in a volume titled *Rage/Hate/Anger and other Forms of Violence*, edited by Madden and Lion.<sup>4</sup> It is notable that he was the first to clarify the concept that dangerousness ". . . is not inherent in a person or situation. Dangerousness is

the estimation of someone of the probability that something 'dangerous' will occur. . . ." In other words, dangerousness is not a quality at all, but an *attribution* of a quality.

Although Steadman's and mine were the first articles to address the subject of dangerousness in the pages of the then-new AAPL Bulletin, the problem of predicting the dangerousness of an individual was age-old. Rappeport's was probably the seminal work in this field. In 1967, he published *The Clinical Evaluation of the Dangerousness of the Mentally Ill*, the proceedings of a symposium held during the 1965 meeting of the American Psychiatric Association.<sup>5</sup> That symposium, incidentally, provided much of the impetus for his founding of the AAPL soon afterward. In his book, Rappeport provided a chapter reviewing the literature on this subject, beginning with Ashley's 1922 article reviewing the outcome of 1,000 patients paroled from a New York state hospital. He also included reprints of his own pioneering work at Spring Grove State Hospital, near Baltimore, where he evaluated the population of hospitalized patients who had required so-called sanity hearings (actually, dangerousness hearings) and had been found to be dangerous by hospital personnel. In his 1962<sup>6</sup> and 1965<sup>7</sup> articles about his research, included in this book, Rappeport noted that no serious incidents called attention to any of those eventually discharged patients. Rappeport's own preface to his 1967 volume expressed the situation as well as anything written to that point:

How do you decide whether any given patient is likely to be dangerous? This question regularly confronts every psychiatrist and yet it is most difficult to answer. Nowhere in the literature is there any clear-cut framework upon which to make such decisions. There are a few studies which show that ex-hospitalized patients are not particularly dangerous, yet when the headlines scream, "Ex-Mental Patient Murders," we immediately look to see if we recognize the name as that of a patient we know. This concerns us all the more when we are called upon to predict the future behavior of a person whom we see as very disturbed, yet who has not been considered mentally ill by others, or who is in need of hospitalization. . . .<sup>8</sup>

The major problem, of course, is that we are called upon, perhaps too often, to predict the behavior of patients or of forensic examinees we have studied. When asked whether these individuals are dangerous, we are also asked, in effect, whether they are *not* dangerous. What kind of prophets must we be? Despite a plethora of papers and arguments indicating that such predictions may be inherently fruitless at worst, and possibly dangerous in themselves at best, the law continues to demand that level of perspicacity in psychiatrists. After all, officers of the law and of the court reason that they do not have the expertise to make those judgments (although they routinely continue to make them) and they always ask us, ". . . and if you, the psychiatrists, do not, then who can?" Nature abhors a vacuum. Unfortunately, to fill it, expert witnesses called to solve the law's problems often provide far-sweeping, judgmental statements rather than clinically oriented, research-based testimony.

Kozol *et al.*, in an oft-quoted 1972 article,<sup>9</sup> opined that dangerousness cannot be diagnosed without a history of previ-

ous dangerous behavior. Most psychiatrists would agree with that, and with the notion that history means more than just the episode in current question. The law, however, has frequently ruled that prior episodes may not be used as evidence in cases in which dangerousness might be an issue. Paradoxes have abounded.

In his 1973 text, *Psychiatry and Law*, Slovenko (who often addressed the issue of dangerousness in many AAPL forums) illustrated another paradox regarding the expectations of the law and the abilities of psychiatrists. He noted that law enforcement officers, lawyers, and judges frequently point out that psychiatric prognosis is unreliable, "[y]et a great part of the information sought from a psychiatrist by the court involves prediction. In many areas. . . the legal process seeks a prediction of future events rather than a determination of who did what at some time in the past. . . ." Slovenko pointed out that in child custody cases the decisions as to the best interests of the children demand looking to the future. Likewise, "in criminal law administration, a prediction is sought of the likelihood that the offender will commit another crime and a judgment as to the seriousness of that potential crime. . . ."<sup>10</sup>

Steadman addressed that very issue at the 1973 AAPL meeting when he reported on the Baxstrom experience.<sup>1</sup> The Baxstrom State Hospital in New York had been forced to transfer to other state hospitals a number of patients previously determined to be dangerous, and follow-up revealed that only very few incidents of assault or other "dangerous" behavior were noted in the new hospitals.

The label of dangerous, though, sticks with people previously adjudged to be dangerous. Slovenko also noted that certain psychiatric diagnoses, usually psychoses, serve as "red flags" to those too eager to judge these patients as uniformly dangerous.<sup>10</sup>

Tanay related a pertinent personal example in the first chapter of his book, *The Murderers*, written with Lucy Freeman.<sup>11</sup> He was to evaluate a "killer" (Tanay's quotation marks) in the office of the head nurse in the jail. The deputies assigned to stay with him and protect him cleared the desk of staplers, paperweights, letter openers, and such. They felt that the "killer" could use any of these to attack the psychiatrist, who insisted that the forensic examinee was harmless as far as he was concerned. The deputies protested that the man had murdered his own wife with an axe. Tanay replied, "Yes, but I am not his wife."

The attribution of dangerousness suffuses through the entire character of a person so labeled. May it, in fact, create a self-fulfilling prophecy? Sadoff has spoken (at least informally; I do not know of any written material by him about this matter) of a condition he has called impotent despair, which he says may lead to violent acting out. An impotently desperate individual is faced with wall after wall preventing him from getting away from a bad situation that might be called dangerous.

Although they continued to emphasize the idea that mental health professionals have only a very limited capacity to assess dangerousness accurately, the Group for the Advancement of Psychiatry

(GAP) Committee on Psychiatry and Law, in 1991, also reemphasized the concept that a history of prior aggressive behavior is important in assessing dangerousness, as well as a careful evaluation of the current presenting disorder.<sup>12</sup> The GAP Committee provided a threefold factored consideration regarding a diagnosis of dangerousness, incorporating the following: "(1) the magnitude of harm likely to result from an act of violence; (2) the likelihood that a harmful act will be committed; and (3) the time span during which that act is likely to occur. . . . An assessment of the magnitude of harm takes into account both predicted physical injury and potential property damage. Probability of harm is determined by evaluating the magnitude of the harm a person is predicted to cause and the likelihood that a person will engage in specific antisocial conduct that will result in harm. . . ." <sup>12</sup>

It does not disparage the GAP Committee to note that Proust wins again. There is still no magic test to provide more definite prognostic indications than theirs, and theirs is tough. Nevertheless, more demands regarding psychiatrists' ability to make these predictions continue to emanate from the need for increased public safety. Silberman, in his 1978 book, *Criminal Violence, Criminal Justice*, discussed the increasing burden that urban fear places on the American citizenry.<sup>13</sup> Recognition of the increase in urban crime rates creates what Silberman calls, ". . . a startling paradox: we fear strangers more than anything else, and yet we live our lives among strangers. Every time we take a walk, ride a subway or

bus, shop in a supermarket or department store, enter an office building lobby or an elevator, work in a factory or a large office, or attend a ball game or the movies, we are surrounded by strangers. The potential for fear is as immense as it is unavoidable. . . .” That fear, at least partly realistic, has led to legal strictures affecting the need for psychiatrists to diagnose dangerousness without providing them with any more reliable means with which to effect the diagnosis.

The *Tarasoff* decision is probably the major example of these legal strictures.<sup>14</sup> The need to protect has been discussed at length by many authors, probably most notably by Felthous, in the pages of the AAPL Bulletin and elsewhere throughout the psychiatric literature.<sup>15, 16</sup> *Tarasoff* served to electrify the psychiatric community and to confront all of its practitioners with the need to develop more exacting criteria for the prediction of dangerousness. Stringency has not been especially notable in most of the writings suggesting how to follow the *Tarasoff* regulations and prevent lawsuits (as well as, incidentally, possibly save lives). Psychological tests have not been particularly helpful, although many have been developed with high hopes of providing meaningful data to help us make correct judgments here.

Articles written in the AAPL Bulletin (later, the AAPL Journal) through the years tend to bear this out. Most recently, Weinberger *et al.* reported on a series of Los Angeles patients who had been held in civil commitment because of prior certification of dangerousness.<sup>17</sup> Significantly, the authors noted that a distinct

disparity in opinions exists between clinicians and district attorneys regarding what is relevant as the bases for extended commitment. In these days of increasingly rigorous standards for involuntary hospitalization, clinicians appear to be more influenced by the *Tarasoff* duty to protect, because of its liability potential. The article concludes, “Consequently, they may have a tendency to approach the assessment of dangerousness broadly and in terms of risk factors. . . .” Those new variables make it tempting to compare the 1998 article with a much earlier article in the AAPL Bulletin by Webster *et al.*, in which the consistency of determinations of dangerousness among psychiatrists was investigated.\*<sup>18</sup> The results demonstrated prodigious inconsistencies. Does the fear of litigation make psychiatrists more consistent in their outcome predictions, although not necessarily more clinically judgmental?

Comparison with another earlier article by Miller and Fiddleman, about full-time patient attorneys altering patient commitment rates, calls attention to the fact that strict clinical and statistical data provide a committing court with the true basis it needs to render judgment about commitment on the basis of dangerousness.<sup>19</sup> Would that we had that ammunition.

Searching through past volumes of the AAPL Bulletin is always a pleasurable task. In this case, however, it provided mainly a sensation of *déjà vu* when an-

\* I cannot resist noting the *double entendre* presented by the title of this article, “The Reliability and Validity of Dangerous Behavior Predictions.” The authors’ warning is obvious that behavior predictions can, indeed, be dangerous. Proust wins again!

other article dealing with dangerousness and its possible or impossible predictability would be discovered in its pages—and there have been many through the years. The same problems and lack of solutions, the same hopes and the same arguments against the increasing demands that we predict when we are unable to do so adequately, all served to demonstrate that Proust was right. We are pushed into predicting even more these days, with the added burden of such new variables as the too ready accessibility of assault weapons as well as handguns. Even so, the clinical or even the statistical bases of our predictions, alas, do not appear to be any more reliable.

#### References

1. Steadman HJ: Implications from the Baxstrom Experience, *Bull Am Acad Psychiatry Law* 1:189–97, 1973
2. American Psychiatric Association Committee on Psychiatry and the Law: A seminar on current issues in law. Presented at a meeting of the American Academy of Psychiatry and the Law, Atlanta, GA, March 16–17, 1973
3. Goldzband MG: Dangerousness. *Bull Am Acad Psychiatry Law* 1:238–44, 1973
4. Steadman HJ: Predicting dangerousness, in *Rage/Hate/Anger, and Other Forms of Violence*. Edited by Madden DJ, Lion JR. New York: Halstead Press (Spectrum Books), pp 53–70
5. Rappeport JR: The Clinical Evaluation of the Dangerousness of the Mentally Ill. Springfield, IL: Charles C Thomas, 1967
6. Rappeport JR, Lassen G, Gruenwald F: Evaluation and follow-up of hospitalized patients who had sanity hearings. *Ibid.*, pp 81–96
7. Rappeport JR, Lassen G: Dangerousness-arrest rate comparisons of discharged patients and the general population. *Ibid.*, pp 97–110
8. *Ibid.*, Preface, p xiii
9. Kozol HJ, Boucher RJ, Garofolo RF: The diagnosis and treatment of dangerousness. *Crime Delinquency* 18:371–92, 1972
10. Slovenko R: *Psychiatry and Law*. Boston: Little, Brown & Co., 1973, p 32
11. Tanay E (with Freeman L): *The Murderers*. Old Tappan, NJ: MacMillan, 1975, Ch 1
12. Committee on Psychiatry and the Law, Group for the Advancement of Psychiatry: *The Mental Health Professional and the Legal System*. New York: Brunner/Mazel, 1991, p 60
13. Silberman CE: *Criminal Violence, Criminal Justice*. New York: Random House, 1978, pp 1–20
14. *Tarasoff v. Regents*, 551 P2d 334 (Cal. 1976)
15. Felthous AR: Substance abuse and the duty to protect. *Bull Am Acad Psychiatry Law* 21: 419–26, 1993
16. Felthous AR: *The Psychiatrist's Duty to Warn or Protect*. Springfield, IL: Charles C Thomas, 1989
17. Weinberger LE, Sreenivasan S, Markowitz E: Extended civil commitment for dangerous psychiatric patients. *J Am Acad Psychiatry Law* 26:75–87, 1998
18. Webster CD, Sepejak DS, Menzies RJ, Slomen DJ, Jensen FAS, Butler BT: The reliability and validity of dangerous behavior predictions. *Bull Am Acad Psychiatry Law* 12:41–50, 1984
19. Miller RD, Fiddleman PB: Changes in North Carolina civil commitment statutes: the impact of attorneys. *Bull Am Acad Psychiatry Law* 11:43–50, 1983