

Commentary: On Research and Forensic Patients' Capacity

H. Richard Lamb, MD

The author agrees that McDermott and colleagues present evidence that may support and ethically facilitate clinical research in the forensic population. Such research is sorely needed if we are to better understand and find new ways to help this population.

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It is refreshing to see evidence suggesting that concerns regarding the ability of both forensic and non-forensic psychiatric patients to provide informed consent for clinical research may be unwarranted, especially in patients with few active symptoms. In recent years, these concerns appeared to be moving in the direction of greatly limiting research, particularly with forensic psychiatric patients. For instance, I have seen valuable, careful studies that did not contain treatment interventions and that posed virtually no risk to mentally ill inmates disapproved by an institutional review board. The reason given was that members of the board believed that mentally ill inmates are not competent to consent to research and would certainly be exploited by it.

Forensic patients, after all, are not only mentally ill but are also essentially prisoners or parolees under the jurisdiction of the criminal justice system. If research cannot be conducted in this population, advances in knowledge about forensic psychiatric patients would gradually grind to a halt. The lack of research would be a problem, not only for the field generally, but also for forensic psychiatric patients who would not be able to benefit from an expanding body of knowledge that could come about as a result of research.

The study described in the article by McDermott and colleagues¹ found that “neither diagnosis nor psychiatric symptoms necessarily diminish capacity in potential research subjects, although the more se-

verely psychotic patients evidenced greater impairment.” The authors also point out that recent research suggests that, even if capacity is diminished, it can be remediated.

Another conclusion of this study is that diagnosis alone is not a predictor of capacity, but rather it is the psychiatric symptoms associated with the psychotic disorder that result in impaired capacity. The authors address the concerns of the National Bioethics Advisory Commission (NBAC) that psychiatric disorders might place individuals at increased risk of being unable to provide informed consent.² They conclude that the NBAC's concerns may be too great and that, while psychiatric patients do evidence some impairments in capacity, as symptoms decrease capacity improves and, further, that capacity can be enhanced by educational efforts.

The authors address concerns documented in the federal regulations that govern research in human subjects with regard to prisoners. The primary concern in these regulations is that prisoners live in an inherently coercive environment where participation in research may be viewed by subjects as connected to decisions about release. The authors agree that this must not happen, for if it did, it would constitute coercion. Therefore, in a further phase of their study, they will attempt to measure these forensic psychiatric patients' perceptions of coercion after their participation in the research.

The importance of this article is that the authors are examining ways to facilitate clinical research ethically in the forensic psychiatric population and thereby reverse a trend that appears to be discouraging such research.

Dr. Lamb is Professor of Psychiatry and Director, Division of Psychiatry, Law, and Public Policy, Keck School of Medicine, University of Southern California, Los Angeles, CA. Address correspondence to: H. Richard Lamb, MD, USC Institute of Psychiatry, Law, and Behavioral Science, PO Box 86125, Los Angeles, CA 90086-0125. E-mail: hlamb@usc.edu

In many respects, the field has reached a fork in the road with regard to research. One fork leads to a total focus on the rights of individuals. Conditions are placed on investigators that greatly limit their ability to conduct the research, even in studies in which no harm could possibly come to the subjects. That exploitation and coercion will occur is taken for granted. We have already taken this fork to the extent that some of the important research of even a decade or two ago could not be performed today.

Of course there have been excesses and abuses of subjects in the past, and these cannot be justified. Fortunately, such occurrences have been the exception. There is no attempt here to advocate a return to such practices.

McDermott *et al.*¹ are taking us down the other fork. They are still very much concerned about the rights of individuals to understand and to be pro-

tected. However, their work indicates an appreciation of the importance to our patients, to the field, and to society itself, of continuing, in an ethical way, to conduct research in this population. How else can we further our understanding of the mental disorders with which we, and they, are confronted, of how our patients have come under the jurisdiction of the criminal justice system instead of the mental health system, and of how we can find new ways to help these persons?

References

1. McDermott B, Gerbasi JB, Quanbeck C, *et al.* Capacity of forensic patients to consent to research: the use of the MacCAT-CR. *J Am Acad Psychiatry Law* 33;299–307, 2005
2. National Bioethics Advisory Commission: Research Involving Persons with Mental Disorders that May Affect Decision-making Capacity, Volume I: Report and Recommendations of the National Bioethics Advisory Commission, December, 1998