

Commentary: The Dynamic Evolution of Forensic Psychiatry at Yale and the Zonanian Sphere of Influence

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Forensic psychiatry at Yale begins, develops, and endures through the life and work of Howard Zonana. But the developments at Yale are only a part of a more complex and global story of one man's extraordinary influence on the evolution of practice and thought in forensic psychiatry in legislation and case law, teaching and scholarship, professional organizational activity, and public policy. This article places Dr. Zonana's career and achievements in the historical context of the field of forensic psychiatry and traces several examples of his activism, scholarship, mentoring, and collegiality. It is a great pleasure to acknowledge our vast collective appreciation of Howard's influence in the lives of those who have had the privilege to know him and work with him and benefit from his many contributions to our field.

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Given the complexity of the topic of this Festschrift, as amply illustrated by our various speakers, I chose a rather simple subject for my brief remarks: "An Early 21st Century Examination of Psychiatry and the Law in Praxis and Pedagogy at the Modern/PostModern Interface: A Longitudinal Global Perspective on the Dynamic Evolution of Forensic Psychiatry at Yale and the Zonanian Sphere of Influence" or "The Hitchhiker's Guide to the Howard Galaxy (The Less Than Complete Version)." But there wouldn't be room in *The Journal* index for such an expansive title, so it is officially shortened as above, but no less is intended in this print version.

To begin our tour, we must set the primordial stage, since Howard was not there at the Big Bang of forensic psychiatry. In 1968, a young Howard Zonana arrived at Yale, much like our fellows continue to do each year. At the time, forensic psychiatry was a young and little-known field, being promoted by a small group of early pioneers, especially Dr. Manfred S. Guttmacher, who in 1930 was the first Chief Medical Officer of the Supreme Bench of Baltimore

and did much to promote interest in forensic psychiatry. Also among the early pioneers was Dr. Samuel Yochelson, a psychologist and psychiatrist who trained at Yale and was then engaged in his studies of the criminal's view of himself and the world that would culminate in the classic text, *The Criminal Personality*.¹

During the year that Howard arrived at Yale, Jonas Rappeport, a student of Manfred Guttmacher who had taken over the Baltimore Court Clinic from him, gathered directors of Forensic Psychiatry Fellowship Programs to begin discussing the formation of a specialty organization for the field. (Jonas could not be with us at the Festschrift, but sent his love to "Howie.") In 1969, the American Academy of Psychiatry and the Law was founded by Jonas and several other leaders, including Jay Katz of Yale, the same year as the efforts of our first lunar explorers.

The Early Zonana Era at Yale

Shortly thereafter, the early Zonana universe was beginning to form. In 1975, the Law and Psychiatry Division at Yale was founded with Attorney Lanse Crane as Co-Director.

That same year, the U.S. Supreme Court decided *O'Connor v. Donaldson*,² establishing limits on the continued civil commitment of nondangerous individuals who could live safely in the community with

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the help of others. By 1977, Howard had completed a study of patients at Connecticut Valley Hospital with Steve Wizner from the Law School and Lanse Crane, which was published in *Hospital and Community Psychiatry*, recommending the importance of periodic external reviews of civil commitment.³

In 1974 and 1976, the *Tarasoff* decisions from the California Supreme Court sent a nation of psychoanalytically oriented psychotherapists into a frenzy. Howard was by then actively working at these issues, bringing them into his circle of practice and influence, the particles of forensic stardust coalescing around his gravitational pull.

In 1979, the Yale Forensic Psychiatry Fellowship was born, with Roy O'Shaughnessy as the first fellow. This was also the year of the first Apple Graphics Tablet, which if Howard didn't have, he almost certainly wished he did.

By 1981, Howard was working on drafting a revised competence-to-stand-trial statute in Connecticut after the previous one had been declared unconstitutional, resulting in the significant changes articulated in Public Act 81-365, which included elimination of terms such as "insane" and "mentally defective" in favor of defining the relevant legal capacities and established new procedural elements.

In the immediate post-Hinckley era, Howard worked on a Law Revision Commission committee to review the insanity defense, which resulted in Connecticut's Psychiatric Security Review Board. In his prototypical melding of forensic knowledge, public policy consultation, scholarship, and collegiality, Howard began to work to analyze the data resulting from experience with the new procedures for managing insanity acquittees in Connecticut.⁴⁻⁶

Involuntary Medication and Civil Patients

We must circle back to explore another area of development in the ever-expanding Zonana universe. In 1983, the year that Bill Gates first announced Microsoft Windows, two major legal cases defined a new era in patients' rights. *Rennie v. Klein* (3rd Cir.)⁷ and *Rogers v. Commissioner of Dep't of Mental Health* (Supreme Judicial Court of Massachusetts)⁸ established rights of civilly committed patients to refuse medication. By 1987, when I came to do my fellowship with Howard, he had been busy working with doctors, lawyers, judges, and advocates on revising Connecticut's statute on involuntary medication to conform to this new national stan-

dard. (Howard was also the first person to describe to me the operation of Microsoft Windows, which he was about to purchase.)

Those negotiations stumbled over the advocacy attorneys' wanting jury trials to override patient medication refusals and doctors' wanting second opinions from colleagues, so by 1993, Connecticut was the last state in the country to still have on its books a law permitting the involuntary medication of involuntarily committed patients. That changed with Public Act 93-369, An Act Concerning Patients' Rights. That bill was the result of legislative arm-twisting by State Senator (and retired naturopathic physician) George "Doc" Gunther, then co-chair of the Public Health Committee. Senator Gunther gave the members of the various constituencies 72 hours to come up with a bill they could all live with, during which time they somehow managed to cobble together an unhappy compromise, certifying the observation that "the making of laws is like the making of sausages—the less you know about the process the more you respect the result" (attributed to a member of the Illinois legislature in approximately 1878⁹). The new law established two separate procedures for involuntarily medicating psychiatric inpatients who had not given informed consent, each representing loosely the positions taken over the years by the two major sides in their recurring discussions.

Grappling With the Ethics of Sex Offender Commitments

In the late 1990s, issues related to the mental health commitment of predatory sex offenders were raising legal and ethics-related questions at state and national levels, and as always, Howard played a role in the analysis, scholarship, and policy formation of this charged set of concerns.

In 1997, the U.S. Supreme Court decided the case of *Kansas v. Hendricks*,¹⁰ declaring that it was permissible for states to define the mental health criteria for involuntary civil commitment as they chose, regardless of the availability of effective inpatient treatment for the condition prompting the commitment. In publishing his examination of these issues in *Science*,¹¹ Howard wanted to reach a wider audience with his analysis of what was problematic with redefining sexual criminal behavior as mental illness, the use of mental health resources for preventive detention, and the misuse of psychiatry.

Howard and a former Law and Psychiatry colleague and two of his former fellows were appointed to Connecticut's legislatively created Study Group on Sexually Violent Persons in 1998. The result of many meetings, the insistence on bringing international experts to present data to the committee, and much debate was the passage of Public Act 99-02 in which Connecticut did not adopt a sex offender commitment law, but instead pursued a policy of providing a criminal justice solution to a criminal justice problem.

During this time, Howard chaired the American Psychiatric Association's Task Force on Sexually Dangerous Offenders. In 1999, the APA published the Task Force Report, which concluded that sexual predator laws were established without regard to scientific and clinical knowledge, represented an assault on the integrity of psychiatry, and should be opposed in favor of criminal justice sentencing alternatives, rather than mental health commitment statutes.¹²

Involuntary Medication and Competency to be Executed

In 2003, in a case that was appealed to the U.S. Supreme Court but never got there, the Eighth Circuit Court of Appeals took up the issue of involuntary medication and competency to be executed. The Eighth Circuit decided that if involuntary medication of a death row inmate had begun before a date for execution had been set, in keeping with procedures for forced medications to prevent danger within the prison, then that involuntary medication could be continued after the execution date had been set.

Once again, in the fashion we have all come to expect, Howard published a careful, complex, and nuanced discussion of the contours of the decision, landing ultimately in agreement with the dissent, but for reasons related to the ethics of medical practice as articulated in the American Medical Association's opinion on the subject of capital punishment.¹³

Secret Service and Psychiatric Patients

One final example will bring home the quality of Howard's contributions that I am trying to illustrate. In 2005, Howard responded to a published suggestion of guidelines for informing the Secret Service when psychiatric patients in an emergency room make threats against the President. Once again, in a

balanced, reasoned, and articulate manner, Howard carefully placed such considerations in an appropriate medical-legal context, appreciating the gravity and legitimacy of the concerns, but also the realities of the clinical conditions for which our patients come to our attention and recommending that clinicians recall first their duties as clinicians and respond to threats within our usual clinical/legal frameworks, including *Tarasoff* duties.¹⁴

Conclusions

This is, I think, the essence of what we have all learned from Howard—whether we have had the privilege of being a fellow under his tutelage or whether we merely enjoy the benefits of his collegiality and scholarship. This is the message we internalize, the process we use when faced with challenging situations. It is what suggests to us the value of asking ourselves the question, “What Would Howard Do?” And when the situations are too complex, too perilous, too unyielding of an answer, we pick up the phone and call Howard.

The structural formation of the expanding Zonana universe at Yale has included an increase to four fellows in 2000, an increase to five fellows in 2008, inclusion of training opportunities in specialized child settings and prison settings, forensic substance abuse evaluations, jail diversion and novel alternatives to incarceration programs, the addition of a public sector lecture series, involvement in a variety of legal clinics at the Law School, placements in attorneys' offices, scholarship requirements for the fellows, and a large and diverse body of faculty in Law and Psychiatry, most of whom are Howard's former fellows.

Beyond Yale, Howard has been a driving force in the work of the American Academy of Psychiatry and the Law (AAPL), the Council of Psychiatry and Law of the American Psychiatric Association (APA), and more recently the American Medical Association (AMA). Psychiatrists and forensic psychiatrists all over the world have been influenced, directed, and instructed by Howard's ever-present and wise counsel. It is a marvelous privilege to be able to take this time to sit back and acknowledge our debt and gratitude to Howard Zonana.

In closing, let me share one of my favorite quotes about the law from Professor Grant Gilmore of the Yale Law School:

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Law reflects but in no sense determines the moral worth of a society. The values of a reasonably just society will reflect themselves in a reasonably just law. The better the society, the less law there will be. In Heaven there will be no law and the lion will lie down with the lamb. . . . In Hell there will be nothing but law, and due process will be meticulously observed.¹⁵

For more than a generation, Howard Zonana has been a kind of prophet of that vision, teaching us that on earth there will be law and psychiatry and that due process points forensic psychiatrists in the direction of our training as healers—to be concerned about the welfare of individuals and to do the best we can within our human limits to seek justice where it may be found.

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