

Commentary: Forensic Education and the Quest for Truth

J. Richard Ciccone, MD

Forensic psychiatry is the subspecialty that applies psychiatric knowledge to answering legal questions. There are ethics dilemmas inherent in its practice and in functioning at the interface of psychiatry and the law. The development of the American Academy of Psychiatry and the Law (AAPL) Ethics Guidelines was an effort to assist forensic psychiatrists in dealing with these dilemmas and the moral adventure of practicing in their field. The responses to the Guidelines that explored other frameworks for dealing with the ethical practice of forensic psychiatry are acknowledged, with an emphasis on applied clinical ethics. The study of ethics in forensic psychiatry should be added to Dr. Scott's list and should be part of the effort to teach AAPL members and forensic psychiatry fellows about important developments in their discipline.

J Am Acad Psychiatry Law 41:33–7, 2013

In his paper, “Believing Doesn’t Make it So: Forensic Education and the Search for Truth” Charles Scott, MD,¹ has done a great service to the American Academy of Psychiatry and the Law (AAPL), by reinforcing its primary mission, education; to the Association of Directors of Forensic Psychiatry Fellowships (ADFPF), by suggesting the development of a specific curriculum for the training of fellows; and to forensic psychiatrists, by alerting them to important advances in the arena of psychiatry and the law.

Early in his paper, Scott provides a brief discussion of some controversies regarding Ethics Guidelines for the Practice of Forensic Psychiatry. However, his primary focus is to urge the teaching of the most reliable scientific methodologies. He seeks to improve the quality of the work of forensic psychiatrists, particularly in the role of expert witness. A comprehensive discussion of forensic psychiatry and ethics and the development of ethics guidelines are beyond the scope of his paper, but practitioners would be remiss in not being aware of the rich body of literature on this subject. AAPL’s Ethics Guidelines can provide advice to forensic psychiatrists

when they seek to avoid the landmines specific to the terrain of their field.

Definition and Context

Psychiatry is the medical specialty dealing with the diagnosis and treatment of disorders of thinking, feeling, and behavior. Forensic psychiatry can be defined as a subspecialty that applies psychiatric knowledge to answering legal questions and functions at the interface of psychiatry and the law.

There are other definitions. AAPL endorsed the one adopted by the American Board of Forensic Psychiatry:

Forensic psychiatry is a subspecialty of psychiatry in which scientific and clinical expertise is applied to legal issues in legal contexts embracing civil, criminal, correctional or legislative matters: forensic psychiatry should be practiced in accordance with guidelines and ethical principles enunciated by the profession of psychiatry.²

The forensic psychiatrist cannot be divorced from the knowledge and clinical skills needed to practice psychiatry. Using either definition establishes a reasonable context for the discussion that follows.

Development of the Ethics Guidelines for the Practice of Forensic Psychiatry

The founders of the AAPL were familiar with the ethics dilemmas inherent in the practice of forensic psychiatry, and the original AAPL bylaws created a Committee on Ethics. The committee members knew of the critiques of forensic psychiatrists as well

Dr. Ciccone is Professor of Psychiatry and Director, Psychiatry and Law Program, University of Rochester Medical Center, Rochester, NY. Address correspondence to: J. Richard Ciccone, MD, University of Rochester Medical Center, School of Medicine and Dentistry, 601 Elmwood Avenue, Box PSYCH, Rochester, NY 14642. E-mail: JRichard_Ciccone@urmc.rochester.edu.

Disclosures of financial or other potential conflicts of interest: None.

as alternative ways of conceiving and constructing ethics guidelines. In the late 1970s, the Committee's first chair, Dr. Jonas Rappeport, presented a draft of guidelines to the AAPL membership for comments. In the early 1980s, Dr. Henry Weinstein was chair of the committee when those comments were considered in the process of developing the AAPL guidelines.³

I was present in October 1982 at Dr. Alan Stone's interesting and provocative luncheon presentation, "The Ethical Boundaries of Forensic Psychiatry: A View From the Ivory Tower."⁴ It was not the first time that disquieting questions had been asked about the ethical practice of forensic psychiatry. Indeed, the AAPL Ethics Committee had been wrestling with these concerns for more than a decade. One question the Ethics Committee considered was whether the specialty called for specific ethics guidelines or if the existing American Psychiatric Association Ethics Guidelines sufficed. In many countries, the ethics guidelines for the practice of psychiatry suffice for guiding work in forensic psychiatry, without any specific reference to the specialty.

The AAPL Ethics Committee decided that some unique concerns, "complications, conflicts, misunderstandings and abuses,"² are faced by forensic psychiatrists, who practice at the interface of psychiatry and the law, and offered guidelines for ethical practice.

Grounds and colleagues⁵ noted that the AAPL Ethics Guidelines reflect the extraordinary amount of intellectual work and effort necessary to achieve consensus among the AAPL membership. Numerous problems were resolved to the satisfaction of the Ethics Committee and AAPL membership over the course of many years of work on the guidelines. I was President of AAPL when the Ethics Committee presented the Ethics Guidelines for approval by the assembled AAPL membership, and I chaired the vigorous discussion. As I recall the events of that meeting, much of the discussion of the proposed Ethics Guidelines focused on objectivity. After much debate, a Quaker-like consensus emerged that the achievement of objectivity by forensic psychiatrists, indeed by any expert witness, is an illusive goal. It is better to be straightforward with ourselves and others; the best we could hope for is to approach objectivity asymptotically—hence the phrase, striving for objectivity.

Applied Clinical Ethics

In the 1980s, the ethicist Colleen Clements and I shared a concern about the existing framework for medical ethics. We sought to deal with the ethics-based practice of forensic psychiatry by developing applied clinical ethics.^{6–11} We were well aware that ethics-related concerns and pitfalls abounded in forensic psychiatry. We listed the conflicting interests of role obligations, conflicts with other participants, and conflicts within the person functioning as an expert. We asked which ethics theory best identifies conflicts of interest and supplies means of dealing with them. Traditional approaches did not appear to be up to the task, and so we developed applied clinical ethics, which provided a method for arriving at workable solutions. We suggested that this working model could be used to identify, describe, and study ethics in forensic psychiatry. The model maintains the psychiatrist's clinical approach while increasing the physician's personal sensitivity, with the incorporation of a more sophisticated theory of ethics.

In 1977, George Engel,¹² an internist who worked closely with psychiatrists (his office at the University of Rochester Medical Center was located in the Department of Psychiatry), wrote about the well-known construct that to understand a patient requires being familiar with the patient's genetic and ontogenetic history. He proposed expansion of the medical model into a biopsychosocial medical model, which is based in systems theory and found in biological and physical science. It is an epistemology and metaphysics of scales and levels of perception and organization. I have written that the epistemology of systems bioethics is one of the underlying components of applied clinical ethics.³

Many colleagues have shared concerns about medical ethics and have written on the subject as it related to forensic psychiatry: they include Paul Appelbaum,^{13,14} Kenneth Appelbaum,¹⁵ Candilis,^{16–18} Griffith,^{19,20} Halleck,²¹ Martinez,²² Modlin,²³ Moore,²⁴ Meyers,²⁵ Norko,²⁶ Rappeport,²⁷ Rosner,^{28–31} Sadoff,^{32,33} Stone,^{34,35} Watson,³⁶ Weiner,³⁷ Weinstein,³⁸ Weinstock,^{39–42} and Zonana.^{43,44} This article is not the vehicle to launch into an in-depth review of this complex body of literature or a detailed discussion of applied clinical ethics. More than 15 years have passed since Weinstock⁴⁵ published an annotated bibliography of

forensic psychiatry and ethics. The time is right for an expanded and updated edition.

The Role of the Expert Witness

Is it possible for a forensic psychiatrist to function ethically in the role of expert witness? Can an expert witness of any discipline function ethically in that role? These questions lead to additional uncertainties that can land us in Dante's pathless dark wood.⁴⁶ Perhaps with the aid of clear thinking and a caring attitude we can find our way. Several initial questions come to mind. What is the nature of knowledge? This query leads us into a journey through epistemology. Assuming that forensic psychiatrists have useful knowledge, how do we deal with bias when working to arrive at an opinion? There are more data than can be captured and repeated with clarity in any expert's work. Are the opinions of the psychiatric expert witness different in kind from those of other expert witnesses? What is scientific knowledge? Scientific evidence is empirically proven, but its validity is reliable.

Uncertainty and contradictions occur as we try to understand the universe. The scientific laws that we use to describe nature are constructs that we impose on reality. These laws are probabilistic and may conflict with one another. For example, the laws of relativity do not work at the subatomic level and conflict with quantum mechanics. Quantum mechanics, useful at the subatomic level, is inadequate to describe physics beyond the subatomic level. How many string theories are attempting to provide a unified explanation of the laws of physics? I have lost count, perhaps as many as there are different forms of psychotherapy. To assert that a statement or opinion is based on scientific knowledge at times carries the implication that this knowledge is an absolute truth that has been arrived at from empirical study, which informs our reasoning and provides probabilistic conclusions. Scientists use testable hypotheses, and a question that cannot be tested by this method is outside the realm of science. The scientist would say, "It is not a question that I am able to address, let alone one that I can answer."

Science is not truth, but a way of approaching reality that has predictive value. It is self-correcting as a method of knowing and can answer many questions, but some of the most important questions human beings ask are beyond their ability to answer. Scientists see these questions as a distraction and ir-

relevant to their work (i.e., not answerable by the scientific method).

Medical evidence and scientific evidence are not different in kind. All scientific evidence is probabilistic. Medical testimony is based on the same probabilistic truth. Our conclusions may have more or less certainty. Some psychiatric patients' mental disorders are easy to diagnose and have a high kappa (i.e., high reliability). Some x-rays are difficult to read and have a low kappa.

Structured Assessment

As Scott pointed out, certain jurisdictions require the use of risk assessment instruments. Whether a forensic psychiatrist is trained to administer or score these tools is a decision best left to the individual practitioner; however, it is important that we be familiar with these tools, with their appropriate administration, their strengths, and very important, their shortcomings. These tools, especially those that can be forged into numbers and percentages can be put forward as scientific. In the hands of some, the probabilistic nature of the numbers, percentages, and statements that are derived from those useful instruments can masquerade as truth.

Checklists, scales, and other instruments can help to ensure some uniformity in the data collected, but uniform collection of data is an illusive goal. We have awakened to many false dawns. Perfect forensic tests have subsequently been shown to have significant flaws: handwriting analysis, lie detectors, fingerprinting, and eyewitness testimony. Checklists with scores that lead to yes-or-no answers to questions of future risk are, in my view, another false dawn. What the checklist score means must be incorporated into the other information that the forensic psychiatrist has gathered when he formulates an opinion.

Checklists, scales, and other instruments do not reveal the truth. They can permit fairly reliable data collection that can be replicated. They are efforts to systematize the collection of data and, by their very nature, eliminate parts of reality that do not neatly fit questionnaire format. One of the most widely used and well respected of the inventories is the MMPI (Minnesota Multiphasic Personality Inventory). Most psychologists would agree that the MMPI provides profiles and scores that can be used for test interpretations that are intended to generate actuarial-type diagnostic hypotheses to assist the clinician. The interpretive results of various structured

instruments provide but one element of the overall forensic psychiatric evaluation. This evaluation would include not only the results of structured instruments but also a review of records and the clinical psychiatric examination. The presence of all of those components generally increases the reliability of the diagnosis and the forensic conclusion.

Forensic psychiatric evaluations usually include the consideration of malingering. Tools for the assessment of malingering are interesting and can be useful. Discussion of that complex task is beyond the scope of this article. Nonetheless, I would like to echo Scott's sentiment that it is desirable for forensic psychiatrists to be educated in the appropriate use of these instruments, with the caveats discussed herein regarding the limitations of structured instruments.

Bias and Forensic Psychiatry

Striving for objectivity calls for forensic psychiatrists to be aware of and alert to various forms of bias. Bias, like Zeus transforming into a bull or swan, can take many forms.⁴⁶ It can influence the way in which we gather, view, and value the data and arrive at a conclusion or opinion.

Scott suggests a foundation for developing a curriculum for teaching about potential biases that may influence the outcome of a forensic psychiatric examination. Scott calls it bias-detection-correction training. Arkes has written on debiasing techniques and believes that they can reduce the magnitude of judgment errors.⁴⁷ Knowing the literature on human judgment is a useful step in debiasing. For example, it appears that the most accurate diagnosticians usually arrive at their final diagnosis later than those who are less accurate, in part because they are open to and consider various alternative diagnoses.⁴⁸

Similar to dealing with countertransference, to contain the impact of bias, the forensic psychiatrist must know that bias exists, be aware of the affective signals that may be a concomitant of bias, and be constantly vigilant to the influence of bias. A model curriculum for teaching about bias in forensic psychiatric work would make a great start to being more attentive to the effects of bias. Perhaps the AAPL Education Committee or an *ad hoc* committee of ADFPF will take up this task.

Conclusions

Teaching those new to the field of forensic psychiatry about the road thus far traveled in the develop-

ment of the AAPL Ethics Guidelines and reminding experienced forensic psychiatrists of this rich history are important ventures. We can all benefit from studying efforts to understand and deal with the ethics challenges when working at the interface of psychiatry and the law.

As Scott pointed out, it has been nearly 45 years since Jonas Rapoport wrote his letter inviting directors of forensic psychiatry fellowship programs and others interested in forensic psychiatry to meet. That meeting led to the formation of AAPL. Today, Scott is writing to AAPL members in the form of a Presidential Address. He is reminding us of the obligation of AAPL and the directors of fellowship programs to be aware of advances in our field, to teach these developments to AAPL members and forensic psychiatric fellows. He has asked that we join him in this important initiative, and I applaud his call to action. To Scott's list of topics for energetic educational efforts, I would add the study of forensic psychiatry and ethics.

References

1. Scott CL: Believing doesn't make it so: forensic education and the search for truth. *J Am Acad Psychiatry Law* 41:18–32, 2013
2. American Academy of Psychiatry and the Law: Ethics Guidelines for the Practice of Forensic Psychiatry. Available at <http://www.aapl.org/ethics.htm>. Accessed on December 4, 2012
3. Ciccone JR, Clements C: Commentary: forensic psychiatry and ethics—the voyage continues. *J Am Acad Psychiatry Law* 29:174–9, 2001
4. Stone A: The ethical boundaries of forensic psychiatry: a view from the ivory tower. *Bull Am Acad Psychiatry Law* 12:209–19, 1984
5. Grounds A, Gunn J, Myers W, *et al*: Editorial: contemplating common ground in the professional ethics of forensic psychiatry. *Crim Behav Ment Health*, 20:307–2, 2010
6. Ciccone JR, Clements C: Forensic psychiatry and applied clinical ethics: theory and practice. *Am J Psychiatry* 141:395–9, 1984
7. Ciccone JR, Clements C: The ethical practice of forensic psychiatry: a view from the trenches. *Bull Am Acad Psychiatry Law* 12:263–77, 1984
8. Clements C, Ciccone JR: Ethics and expert witnesses: the troubled role of psychiatrists in court. *Bull Am Acad Psychiatry Law* 12:127–36, 1984
9. Clements C, Ciccone JR: Applied clinical ethics or universal principles. *Hosp Community Psychiatry* 36:121–3, 1985
10. Ciccone JR, Clements C: The insanity defense: asking and answering the ultimate question. *Bull Am Acad Psychiatry Law* 15:329–38, 1987
11. Ciccone JR, Clements C: Commentary: the cost of converting religious morals into politics. *J Am Acad Psychiatry Law* 36:485–90, 2008
12. Engel G: The need for a new medical model: a challenge for biomedicine. *Science* 196:129–36, 1977
13. Appelbaum P: Psychiatric ethics in the courtroom. *Bull Am Acad Psychiatry Law* 12:225–31, 1984

14. Appelbaum P: Ethics and forensic psychiatry: translating principles into practice. *J Am Acad Psychiatry Law* 36:195–200, 2008
15. Appelbaum K: Political abuse by psychiatry: an introduction to the Munro commentaries. *J Am Acad Psychiatry Law* 30:95–6, 2002
16. Candilis P, Martinez R: Commentary: the higher standards of aspirational ethics. *J Am Acad Psychiatry Law* 34:242–4, 2006
17. Candilis P, Weinstock R, Martinez R: *Forensic Ethics and the Expert Witness*. New York: Springer, 2007
18. Candilis P: Commentary: a new chapter for forensic ethics. *J Am Acad Psychiatry Law* 39:342–4, 2011
19. Griffith EEH: Ethics in forensic psychiatry: a cultural response to Stone and Appelbaum. *J Am Acad Psychiatry Law* 26:171–84, 1998
20. Griffith EEH: Personal narrative and an African-American perspective on medical ethics. *J Am Acad Psychiatry Law* 33:371–81, 2005
21. Halleck S: The ethical dilemmas of forensic psychiatry: a utilitarian approach. *Bull Am Acad Psychiatry Law* 12:279–88, 1984
22. Martinez R, Candilis P: Commentary: toward a unified theory of personal and professional ethics. *J Am Acad Psychiatry Law* 33:382–5, 2005
23. Modlin H: The ivory tower v. the marketplace. *Bull Am Acad Psychiatry Law* 12:233–6, 1984
24. Moore M: *Law and Psychiatry: Rethinking the Relationship*. New York: Cambridge University Press, 1984
25. Myers WC, Hall RWC, Eth S: AAPL's new ethics guidelines. *Am Acad Psychiatry Law Newsletter* 31:12–13, 2006
26. Noriko MA: Commentary: compassion at the core of forensic ethics. *J Am Acad Psychiatry Law* 33:386–9, 2005
27. Rapoport J: Editorial: is forensic psychiatry ethical? *Bull Am Acad Psychiatry Law* 12:205–7, 1984
28. Rosner R: Forensic psychiatry: a subspecialty. Presented as the Presidential Address at the 19th Annual Meeting of The American Academy of Psychiatry and the Law. *Bull Am Acad Psychiatry Law* 17:323–3, 1989
29. Rosner R, Weinstock R (editors): *Ethical Practice in Psychiatry and the Law*. New York: Plenum Press, 1990
30. Rosner R: Ethical practice in the forensic sciences and justification of ethical codes. *J Forensic Sci* 41:913–15, 1996
31. Rosner R: Foundations of ethical practice in the forensic sciences. *J Forensic Sci* 42:1191–4, 1997
32. Sadoff R: Practical ethical problems of the forensic psychiatrist in dealing with attorneys. *Bull Am Acad Psychiatry Law* 12:243–52, 1984
33. Sadoff R. *Ethical Issues in Forensic Psychiatry: Minimizing Harm*. Oxford: John Wiley Sons, 2011
34. Stone AA: Presidential address: conceptual ambiguity and morality in modern psychiatry. *Am J Psychiatry* 137:887–91, 1980
35. Stone A, MacCourt DA: Ethics in forensic psychiatry: reimagining the wasteland after 25 years. *J Psychiatry Law* 36:617–43, 2008
36. Watson A: Response from a straw man. *Bull Am Acad Psychiatry Law* 12:221–4, 1984
37. Weiner B: Ethical issues in forensic psychiatry: from an attorney's perspective. *Bull Am Acad Psychiatry Law* 12:253–61, 1984
38. Weinstein H: How should forensic psychiatry police itself: guidelines and grievances: the AAPL Committee on Ethics. *Bull Am Acad Psychiatry Law* 12:289–302, 1984
39. Weinstock R: Ethical concerns expressed by forensic psychiatrists. *J Forensic Sci* 31:596–602, 1986
40. Weinstock R: Controversial ethical issues in forensic psychiatry: a survey. *J Forensic Sci* 33:176–86, 1988
41. Weinstock R: Perceptions of ethical problems by forensic psychiatrists. *Bull Am Acad Psychiatry Law* 17:189–202, 1989
42. Weinstock R: Letters to the editor. *J Am Acad Psychiatry Law* 26:151–5, 1998
43. Zonana H: Forensic psychiatry: critique of a critique. *Bull Am Acad Psychiatry Law* 12:237–41, 1984
44. Zonana H. AAPL's new ethics guidelines. *Am Acad Psychiatry Law Newsletter* 30:5, 2005
45. Weinstock R: Ethics in forensic psychiatry: an annotated bibliography. *Bull Am Acad Psychiatry Law* 23:473–82, 1995
46. Ciardi J: *Translation in Verse of The Divine Comedy by Dante Alighieri*. New York: WW Norton Company, 1970, p 65
47. Arkes HR: Impediments to accurate clinical judgment and possible ways to minimize their impact. *J Consult Clin Psychol* 49:323–30, 1981