

# Legislative Advocacy and Forensic Psychiatry Training

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Very few residency and fellowship programs offer mandatory or elective rotations in health advocacy. Where there are formal training opportunities, they are commonly didactic or clinical community rotations, where trainees participate in a clinically oriented project with a local community organization. Fewer programs offer specific training opportunities in legislative advocacy and the legislative process. The University of Washington assembled two task forces to advise the general psychiatry residency program on training needs in the areas of (1) Forensic Psychiatry and (2) Advocacy and Public Policy. Both task forces identified, as an aspirational goal, resident involvement in legislative and regulatory processes as means of advocacy. This article describes a model curriculum in legislation developed at the University of Washington that is suitable for trainees at different stages in their professional development (including residents and fellows), and an explanation of how the curriculum supports training in forensic psychiatry. Challenges in creating the elective training opportunity are also discussed.

**J Am Acad Psychiatry Law 46:147–54, 2018. DOI:10.29158/JAAPL.003741-18**

Physicians have opportunities to play important roles in health advocacy. Many physicians gain experience in advocating for individual patients. Such advocacy could mean seeking insurance approval or taking other steps to secure resources for a patient. Beyond the individual level, however, it may focus on a broader sphere to include local, regional, national, or international policies with larger societal implications. Yet, many physicians lack formal training or skills to pursue these activities beyond the individual level with patients.

In recent years, several medical professional organizations have endorsed the role of the physician as advocate. Among these, the American Medical Association (AMA) calls physicians to commit themselves to “advocate for the social, economic, educational, and political changes that ameliorate suffering and contribute to human well-being.”<sup>1</sup> This position is supported by the American Psychiatric Association (APA).<sup>2</sup> The APA’s Principles of Medical Ethics with

Annotations Especially Applicable to Psychiatry, adopted from the AMA, includes the following sections:

Section 3: A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.

Section 7: A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.

Section 9: A physician shall support access to medical care for all people.<sup>3</sup>

An annotation to Section 7 further speaks to psychiatrists’ roles as advocates:

Psychiatrists should foster the cooperation of those legitimately concerned with the medical, psychological, social, and legal aspects of mental health and illness. Psychiatrists are encouraged to serve society by advising and consulting with the executive, legislative, and judiciary branches of the government . . . [Ref. 3, Section 7(1) at 11].

Several educational programs have similarly endorsed the role for advocacy in medical education. The Accreditation Council for Graduate Medical Education (ACGME) Program Requirements for Graduate Medical Education in Psychiatry list education in advocacy as a requirement for all general psychiatry residents.<sup>4</sup> The ACGME milestones for general psychiatry and forensic psychiatry likewise

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

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**Table 1** Relevant ACGME Guidelines and Milestones in Psychiatry and Forensic Psychiatry: Advocacy, Legislation, and Regulation

1. ACGME program requirements for graduate medical education in psychiatry, 2017 <sup>4</sup>	
IV.A.5.f).(4)	Advocate for quality patient care and optimal patient care systems
IV.A.5.f).(10)	Advocate for the promotion of mental health and the prevention of mental disorders
2. ACGME and ABPN: the psychiatry milestone project, 2015 <sup>5</sup>	
MK6 4.2/C	Describes professional advocacy*
MK6 5.2/C	Proposes advocacy activities, policy development or scholarly contributions related to professional standards
SBP2 5.2A	Advocates for improved access to and additional resources within systems of care
PROF2 5.3/B	Participates in the professional community (e.g., professional societies, patient advocacy groups, and community service organizations)
3. ACGME program requirements for graduate medical education in forensic psychiatry, 2016 <sup>13</sup>	
IV.A.2.b).(1).(h)	Legal regulation of psychiatric practice
IV.A.2.b).(2)	Must demonstrate competence in their knowledge of the legal system related to forensic psychiatry, including . . . (f) fundamentals of laws, statutes, and administrative regulations
4. ACGME and ABPN: The forensic psychiatry milestone project, 2015 <sup>6</sup>	
PROF2 4.2B	Participates in the primary specialty and forensic psychiatric professional community (e.g., patient advocacy groups, community service organizations)
SBP2 5.1	Advocates for improved access to, better allocation of, and, as appropriate, additional resources within forensic and community systems of care
MK1 1.1/A,B,C	Demonstrates basic knowledge of the legal regulation of psychiatric practice
MK1 2.2/A	Demonstrates knowledge of basic concepts and sources of law and the court structure
MK1 3.2A	Demonstrates knowledge of jurisdiction, constitutional principles, and relevant state and federal laws
MK1 5.1/A	Demonstrates sufficient knowledge to provide assistance in the drafting of legal briefs, statutes or regulations
PBL11 5.3/B	Independently teaches appraisal of clinical evidence and legal developments

\*"Advocacy includes efforts to promote the wellbeing and interests of patients and their families, the mental health care system, and the profession of psychiatry. While advocacy can include work on behalf of specific individuals, it is usually focused on broader system issues, such as access to mental health care services or public awareness of mental health issues. The focus on larger societal problems typically involves work with policy makers (state and federal) and peer or professional organizations (American Psychiat[r]ic Association (APA), National Alliance on Mental Illness (NAMI), etc" (Ref. 5 at 20-1).

identify advocacy as an important competency for professional development.<sup>5,6</sup> Table 1 identifies relevant ACGME guidelines and milestones related to advocacy, legislation, and regulation.

Despite recognition of the role for advocacy training in professional development, formal education in the health care area is variable. Advocacy in medical education is amorphous, and educational organizations have not established clear guidelines or models for the education of trainees in this area. A review of the literature suggests that few programs offer rotations specific to health advocacy. Where formal advocacy training exists, education in legislative advocacy and the legislative process are uncommon. The focus is largely on advocacy knowledge and skills at the level of the patient and public health projects, rather than legislation.

Existing programs for medical students and graduate medical trainees tend to make use of one or more of the following formats: service-learning clinical rotations, lecture-based curricula, and site visits. In clinically oriented rotations, trainees work with underserved or traditionally disenfranchised popula-

tions through clinical care. In conjunction with clinical care, trainees may also complete an independent study or advocacy project with community partners or may interview patients and their relatives to gain better understanding of social determinants of health.<sup>7,8</sup> Others are lecture-based with instruction on general advocacy skills (e.g., communication, media) or on common topics of physician advocacy (e.g., social determinants of health, health care reform).<sup>9,10</sup> Few programs offer meaningful exposure to legislative advocacy outside of limited opportunities to visit legislative offices or organized legislative advocacy days.<sup>7,10,11</sup> These typically include organized trips to the state capitol. Factors influencing curricular variation include differences in faculty expertise, local training opportunities, geographic proximity of the training program to the state capitol, institutional support for the concept of advocacy training, and competing demands on trainees to gain other skills and competencies.

Legislative advocacy refers to the efforts to introduce, enact, or modify legislation. These efforts could include reviewing or critiquing a model bill,

drafting a bill, and lobbying the legislators to pass or halt proposed laws, among others. These undertakings could be made at a local level or more broadly. As mentioned above, in medical training, visits to legislative offices or participation in organized legislative days are ways that trainees have gotten involved in legislative advocacy.<sup>11</sup> Infrequently, trainees are exposed to the process of legislative drafting and interpretation or to the significance of statutory law and administrative rules to the practice of medicine, including psychiatry. Although it may be argued that all psychiatrists have responsibilities to know about legislative matters that affect their work and patients, specific training in legislative advocacy can be particularly useful for those who will take on forensic or administrative roles, as well as policy leadership roles. I found no article specific to legislative advocacy in psychiatry education, other than a call for forensic psychiatry fellows to gain experience in this area.<sup>12</sup>

### **Forensic Psychiatry and Legislative Advocacy**

Forensic psychiatry deals with a variety of circumstances at the interface of criminal law and civil law, but also has a role in the development and application of mental health legislation.<sup>14</sup> The American Academy of Psychiatry and the Law's Ethics Guidelines define the field as: "a subspecialty of psychiatry in which scientific and clinical expertise is applied in legal contexts involving civil, criminal, correctional, regulatory or legislative matters, and in specialized clinical consultations in areas such as risk assessment or employment."<sup>15</sup> Although legislative matters have not historically been a primary focus of training in forensic psychiatry, identified herein are ways in which training in legislation and legislative advocacy support training in forensic psychiatry.

#### **Understanding the Legal System**

Medical trainees and professionals, even those interested in psychiatry and the law, usually have limited knowledge of sources of law and how laws are made. For many general psychiatry residents and forensic psychiatry fellows, the focus of their legal learning is through case law. General psychiatry residents learn about a handful of key legal cases that have shaped the profession of psychiatry, such as *Tarasoff v. Regents of the University of California*.<sup>16</sup>

Although forensic psychiatry fellows have more varied experiences with the legal system, fellows too learn much about the legal system through reading and education related to the landmark cases, a core component of forensic psychiatry fellowship training.<sup>6</sup>

What may go unrecognized by trainees are the relationships between statutes, regulations, and case law. Central to legislative advocacy is the fact that statutes may supersede an earlier court decision. For example, if the legislature disagrees with a court ruling, the legislature can pass a new statute or amend an existing one to correct the court's decision.

#### **Statutory Interpretation**

As a practical matter, forensic psychiatrists are commonly in a position to opine on matters guided by statutory law. For example, most states have statutes that govern criteria for civil commitment and the insanity defense and the standard for competence to stand trial.

By participating in the legislative process, one gains insight into the actual language of the finished statute and may learn how or why certain words are selected by the legislature. The legislative history provides information about the drafter's or legislature's intent or impetus in adopting the bill. Understanding the legislative process and how bills become statutes helps forensic psychiatrists better understand, apply, interpret, and explain how their opinions are consistent with the applicable statutory standard.

#### **Think Like a Lawyer**

Pragmatically, in working in the area of legislative advocacy, participants are likely to work with lawyers. Participants may gain a firsthand look at how legislative and administrative lawyers think and function. Although many of our experiences in law tend to be adversarial, participants may observe additional legal skills, such as consensus building and use of methodological approaches to create, pass, or defeat bills.

Perhaps more helpful, involvement in legislative advocacy shines light on how lawyers identify problems, articulate remedies, and learn to anticipate the arguments and responses of their adversaries. In addition to attention to the actual language of the bill, drafting legislation requires familiarity with broad public policy positions and considerations of potentially numerous stakeholders. What goals are

furthered by the bill? How would it lead to problems? How are courts likely to apply the statute? What are downstream consequences if the statute is interpreted differently? These questions are at the surface in legislative matters and can instruct participants on how lawyers may craft language and think through their positions.

### **Consultant and Teaching Roles**

For those who will be expert witnesses, participation in legislative advocacy provides trainees with opportunities to serve as a consultant and teacher. The psychiatrist can provide consultation to the drafters and organizers of the proposed bill, or to those who are in opposition to the bill. In addition, the psychiatrist may consult directly with lobbyists or lawyers involved in the legislation and directly with legislative aides and legislators and before committees.

Psychiatrists have a valuable role in educating nonpsychiatrists about the clinical and scientific aspects of the legislation. They can “help lawmakers bridge the gap between legal necessities and psychiatric realities in a fashion that allows for increased feasibility of proposed legislation” (Ref. 17 at 51). Psychiatrists may teach relevant parties about how the bill is likely to affect the practice of psychiatry, for better or worse. It can be useful for the psychiatrist to provide clear real-world examples from clinical practice to illustrate the merits or weakness of the bill. Participation in the legislative process may help psychiatrists hone skills in delivery of technical or scientific information to nonphysicians in a way that is intelligible and understandable to those without medical training, similar to how forensic psychiatrists interact with judges and juries in litigation.

### **Testifying**

Participation in legislative advocacy may afford psychiatrists opportunities to testify before Congress, state legislatures, or regulatory agencies, among other venues. Legislative hearings are one step in the process a bill takes before becoming law. Public legislative hearings are open to everyone and allow participants to speak in support of or against the bill at issue. The testimony of mental health professionals is commonly valued by policy makers. Psychiatrists and other mental health professionals provide valuable testimony on clinical knowledge, relevant research or actuarial data, and practical examples that help illustrate concepts proposed in the bill.

Psychiatrists can gain experience articulating clear, confident testimony to persons unsophisticated in mental health concerns. In legislative hearings, speakers may have a definite time, usually five to seven minutes, to present their statements. In this manner, speakers need to think in advance about the key points that they want to prioritize to the audience. Speakers may field questions, from legislative committee members, for example, analogous to cross-examination on a witness stand.

### **Distinguishing Between Types of Advocacy**

Forensic psychiatrists may, understandably, be cautious in participating in any form of advocacy. In other areas of forensic practice (for example, when serving as a forensic evaluator for a case in litigation), forensic evaluators are encouraged to strive toward objectivity.<sup>15</sup> Although advocating for one’s opinion may be desirable, forensic psychiatrists are discouraged from advocating for the party or lawyer that hired them.<sup>18</sup> When it comes to legislative advocacy, the interests involved are often very different.

Bloom<sup>12</sup> has persuasively argued that forensic psychiatrists have a professional, if not an ethics-based, responsibility to be leaders in the legislative and regulatory processes that affect our profession and patients, stating:

[W]e are responsible for being aware of [legal] changes, regardless of whether they come from the courts, legislatures, or the executive branch of government. This means that, as subspecialists, forensic psychiatrists have a responsibility to all psychiatrists living in the state to be aware of the laws and the proposed changes that may affect the practice of psychiatry in that state. Each jurisdiction needs a balanced set of mental health laws that allow psychiatric practice to operate in a reasonable and effective manner [Ref. 12, p 420].

Training in legislative advocacy supports discussion of when and how to advocate as a forensic psychiatrist.

### **Model Curriculum**

With the growing recognition of the role of advocacy training in medical education, the University of Washington Psychiatry Residency Program assembled a task force in 2015, seeking recommendations on means to provide education to general psychiatry residents in leadership, advocacy, and public policy. Although not recommended as a requirement for psychiatry residents, the task force identified resident involvement with organizations or activities that may

expose them to legislative advocacy as aspirational. Examples included involvement with community organizations with advocacy roles, such as the state psychiatric association or National Alliance on Mental Illness (NAMI), as well as work with lobbyists or participation in an organized legislative advocacy day. The University of Washington Psychiatry Residency Program also assembled a task force for recommendations on teaching forensic psychiatry topics to general psychiatry residents. Among the recommendations, the forensic task force identified legislative advocacy as aspirational, and the task force specifically included recommendations for participation in the legislative process, such as reviewing or drafting real or mock statutes or administrative codes.

To address the recommendations of the task forces, an elective experience in legislative advocacy was created. What follows is a model curriculum in legislation developed at the University of Washington. The aim is to describe one program's approach to legislative advocacy education, experience in developing the curriculum, and lessons learned or challenges associated with offering a meaningful educational experience in legislative advocacy. This model expands on activities in legislative advocacy previously described in the literature.

### **Curriculum Development and Design**

Looking at existing curricula and activities at the University of Washington, one course was identified as suitable to include dedicated training in legislative advocacy. This course was Psychiatry and the Law, a 12-week elective research-based course for senior psychiatry residents and trainees in medical school, psychology, nursing, social work, and law. The course is held in the evening to accommodate the instructors and clinical trainees. Interested psychiatry residents can elect a six-month, half-day-per-week rotation, combining the 12-week Psychiatry and the Law course component with an additional 12 weeks focused on a mentored research project. The University of Washington is affiliated with a forensic psychology postdoctoral program, and the fellow in the program is invited to participate in the course, if desired. The University of Washington does not have a forensic psychiatry fellowship program. Should a forensic psychiatry fellowship be developed in the future, the course would be suitable for forensic psychiatry fellows. Each fellow could

complete a scholarly project through participation in the course.

The course has two coinstructors, one of whom is a clinical psychologist with decades of experience in research and clinical care involving justice-involved patients. I am the other course instructor, and my credentials include completion of a forensic psychiatry fellowship, law degree, and scholarly work at the intersection of psychiatry and the law. Both instructors have consulted on legislative matters and have had roles in organized medicine.

The Psychiatry and the Law course has been structured for trainees to work in interdisciplinary teams to develop research skills in mental health and the law. The course includes a didactic component with emphasis on key concepts in forensic psychiatry, as well as research design, research tools, and research ethics related to mental health and law. Course participants are grouped into small mentorship teams, with each team consisting of one faculty advisor and trainees from multiple disciplines. Each course participant designs and completes a research project and paper with the assistance of their course advisor. The course is limited to six or eight participants to provide sufficient individual mentorship to each enrollee. The diversity of the participants' disciplines and levels of training enriches the course, because class participants learn from one another. More experienced trainees provide consultation to those with less experience. The more experienced trainees, in turn, learn to convey complex, and sometimes highly technical, material to those who lack their level of training.

Using the existing structure of the Psychiatry and the Law course, we adapted the course to include didactic instruction on principles of legislation and legislative research to complement the existing curriculum; add supplemental reading on issues pertinent to legislative process and advocacy; and offer interested trainees guided experience in legislative advocacy through development of their course projects. Students select whether they want to participate in the traditional research track or the legislative advocacy track. Table 2 identifies the goals and objectives for the legislative advocacy track.

The elective course offers self-directed trainees an opportunity to gain experience in legislative advocacy and to pursue in depth a policy or topic that is of interest to them. The most meaningful aspect of the curriculum is the trainee's individual project. For

**Table 2** Goals and Objectives: Legislative Advocacy Track

Goals
To learn more about psychiatry and the law, including legislative advocacy related to mental health law
Objectives
To understand the U.S. legal structure and sources of law
To become familiar with theories of statutory interpretation and the role of courts in interpreting statutes
To understand the legislative process
To understand how medical and legal research may be used to support, refute, or analyze legislative proposals
To develop research skills using both medical and legal sources
To define legislative advocacy
To become familiar with organizations and agencies involved in mental health legislation
To complete a written project focused on legislative advocacy in mental health law

those who pursue the legislative advocacy track, trainees may tailor their written project to a format that best matches their needs and interests. Table 3 lists several project types approved by the course instructors. Participants in the course may identify local legislation, or they may look to bills of interest to them from other jurisdictions.

The course format of participants working in small mentorship teams, with one faculty advisor and trainees from multiple disciplines, facilitates valuable feedback to participants as they develop, research, and prepare their written projects. Trainees are required to participate actively in small group discussions with their mentorship teams and to discuss their work. The interdisciplinary participation is particularly useful for trainees to gain perspective and feedback about the implications of policy on various stakeholders.

In addition, the mentorship teams provide participants with useful feedback about future directions for promoting their work. For example, participants

**Table 3** Legislative Advocacy Track: Activities to Fulfill Project Requirement

Review current legislation and explain the anticipated effect on the practice of psychiatry or patients
Review current legislation and recommend and explain revisions
Draft proposed legislation or an amendment to existing law and explain why it should be enacted
Analyze viewpoints of stakeholders involved in current legislation and develop a plan to support or oppose the viewpoints
Submit op-ed articles to local newspapers addressing active legislation or recently enacted legislation
Write a persuasive paper for lawmakers to educate them on the ramifications of a bill

have been directed to advocacy organizations, legislators, and other faculty members versed in the topic of the trainee’s project. Although this is only the second year that the legislative track has been offered, one-third of course participants have selected this track. One former trainee testified before a legislative hearing on a bill that he had been researching for the course on clinician reimbursement for telehealth services. Another former trainee has become the local expert on a recently passed mental health bill permitting the family, under certain conditions, to petition the superior court directly to detain a person civilly for evaluation and treatment. This trainee presented at a local conference his interpretation and recommendations for implementing the legislation.<sup>19</sup> In this manner, these trainees have opportunities to practice legislative advocacy, in addition to writing about it. Another example of trainee participation in legislative advocacy is described next.

**Legislation on Duty to Protect**

A significant legal case with implications for psychiatry was decided by the Washington Supreme Court in the month preceding the 2017 administration of the Psychiatry and the Law course. The legal case, *Volk v. DeMeerleer*, concerned a mental health clinician’s duty to protect third parties from harm by their patients, extending the duty to protect persons who “might reasonably be foreseeable victims.”<sup>20</sup> To many, the case ruling is seen as a departure from previously established law in the state and raises concern for the practice of psychiatry and protection of patient confidences.<sup>21</sup> In the aftermath of the court ruling, several state medical organizations joined to prepare an *amicus* brief in support of the defendant psychiatrist’s motion for court reconsideration. The court did not grant a rehearing. In addition, several medical societies joined to draft a legislative remedy.

With this as background, one psychiatry resident in the latest offering of the rotation elected to follow the developments of the *Volk* ruling and critique a bill created in response to the ruling. To date, with supervision and participation of one of the course’s faculty members, the resident has had the following opportunities related to legislative advocacy:

- Research relevant laws from other states;
- Review the legislative history of Washington’s statute on the topic;

Review the proposed legislation and subsequent amendments;

Discuss strategy for legislative drafting with the bill's authors;

Discuss strategy for bill passage with lobbyists for professional health care associations;

Attend a state legislative conference where course faculty presented on the topic;

Present on the case and bill at meetings of specialty medical societies;

Observe coalition building by participating in phone calls between stakeholder groups;

Witness legislative hearings on the proposed bill;

Speak about the bill and personal involvement in the legislative process at a university conference; and

Write a scholarly article addressing some of the implications of the case (without legislative remedy) for the practice of psychiatry.

This psychiatry resident gained experience in multiple aspects of legislative advocacy. Although the timing of the *Volk* case and response by organized medical societies may not be replicated for future offerings of the Psychiatry and the Law course, future trainees in the course are likely to participate in some aspects of the process, or may be inspired to continue this type of work after completion of the course.

### Challenges

Although the University of Washington identified a way to incorporate legislative advocacy into an existing course, there are several challenges associated with inclusion of this component in a training program. Local resources, program proximity to the state capitol, and competing demands on trainees' time are among the limitations to designing a curriculum in legislative advocacy. Among the most significant challenges is having sufficiently trained and dedicated faculty versed in legislative advocacy. In some cases, this may be remedied by having coinstructors to include medical faculty and a lawyer or policymaker versed in the legislative process and legal research tools.

Research and writing courses are time consuming for faculty, and this is true, too, when trainees are drafting model legislation or commenting on proposed legislation. The course participants learn

from feedback, requiring the faculty advisor to have a keen understanding of the policies being evaluated by the trainees. Gaining sufficient understanding may require the faculty member to research some aspects of the legislation or related matters independently. Although the University of Washington is supportive of the Psychiatry and the Law course and inclusion of legislative advocacy training, the instructors volunteer to teach the course and are not afforded protected time for their contributions. This arrangement is likely true of other programs.

Depending on the interests and scope of the trainee's legislative project, it may be difficult for course participants to become involved in the legislative process, beyond review of a bill and their written work, in the time allocated to the course. For example, the University of Washington offers the Psychiatry and the Law course as part of an elective six-month, half-day-per-week rotation for psychiatry residents, combining research, didactic instruction, mentorship teams, and supervision. In the future, there may be options for residents to participate in the rotation for three or six months. Residents are likely to have more opportunities to participate in various stages of the legislative process with longer rotations.

As mentioned above in the discussion of the example, the legislative process is unlikely to coincide neatly with the course in most cases. Course participants may participate in some aspects of the legislative process during the course, but they are likely to continue their involvement after completion of the course if they want actual experience in creating or changing law. Similarly, faculty involved in the course may find themselves extending their participation outside the classroom to legislative hearings, organized meetings, and other activities to support their students' efforts.

Finally, course instructors should provide some instruction on advocacy ethics in the curriculum. Topics for instruction may include conflicts of interests; transparency and honesty in disclosures; protection of confidentiality; recognizing personal bias; maintaining boundaries in professional relationships with policymakers and other stakeholders; use of university or state resources for legislative advocacy; and speaking only to matters within one's professional competencies. For example, although providing clinically relevant examples can be very useful for

medical professionals in providing support for their advocacy positions, trainees should be reminded of the importance in deidentifying any case particulars. It is important that course participants represent their advocacy positions may differ from those of the university. Thus they should know whom they are representing when advocating in a public venue.

## Conclusions

Although advocacy is recognized as an important topic for medical education, educational programs and experiences in advocacy are varied. Exposure to legislative advocacy may be of interest to general psychiatry residents, but it may be useful for trainees with intention to specialize in forensic psychiatry. I have suggested ways in which legislative advocacy can support training in forensic psychiatry and contribute to a more balanced understanding of the legal system, how laws are made, and relevant skills for forensic psychiatrists. Although I have described a model program from the University of Washington, there are other ways for trainees and professionals to get involved in legislative advocacy. Forensic psychiatrists can play an instrumental role in this process.

## Acknowledgments

The author thanks Dr. Edward Goldenberg for contributions to the course in Psychiatry and the Law.

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