

The Many Faces of Forensic Psychiatry

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Who are forensic psychiatrists? What do they do?

The term "forensic psychiatrist" means different things to different people. Think of your favorite forensic psychiatrist – the one who may represent your ego ideal. The image of Alan Stone, psychiatric statesman and law school professor, may come to mind, or that of Seymour Pollack, an academic who is much more involved in courtroom testimony and who heads a highly acclaimed program to train others to be useful to the courts. Perhaps you would see Robert Sadoff or Ames Robey or Jonas Rappeport, contributors to the psychiatric literature who are known for their wide clinical experience and who frequently testify, as more representative forensic psychiatrists. Some "typical" forensic psychiatrists are employees of the courts or other governmental agencies; they may be primarily evaluators and witnesses. Some forensic psychiatrists are involved in correctional work as psychiatric therapists or rehabilitators. Some are policy planners.

Many lawyers would pick Thomas Szasz, the anti-authoritarian psychoanalyst and psychiatry professor, as their favorite forensic psychiatrist. He is the most widely known forensic psychiatrist; those who wish to whittle away at the authority of psychiatrists appreciate the ammunition he has given them. Psychiatrists find Ralph Slovenko, who is primarily a lawyer and a law professor but who has a degree in psychiatric therapy, much more understanding of the practicalities of treatment and much more supportive of the treating doctor; he might be seen as a more typical forensic psychiatrist.

It is obvious that forensic psychiatrists come in varying forms and sizes.

In the early 1960s a friend who worked for the National Institute of Mental Health thought I could be useful as a forensic psychiatric consultant because I had both a legal and a psychiatric background. He asked me to submit my application.** I responded with a prompt refusal stating that I was certainly a lawyer and certainly a psychiatrist, but I had not combined these two disciplines sufficiently, so I was not a forensic psychiatrist. Since that time I have done a great deal of teaching and writing in the field, although I still do not fill one important forensic psychiatric function – I do not (usually) evaluate for court purposes or testify; in contrast to my teaching, which is legally oriented, my practice is confined to general psychiatry and

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**NIMH turned down the application.

psychoanalysis without forensic emphasis. I do consider myself a forensic psychiatrist.

When the American Academy of Psychiatry and the Law was founded in 1969, its members had to consider the question of eligibility for membership. What should one have accomplished to be a member of a forensic psychiatric association?

The question became so difficult to answer — the prospective members represented a wide range of experiential and theoretical backgrounds — that it was decided to offer membership to anyone belonging to the American Psychiatric Association (or an equivalent association in another country) who was working in the field of law and psychiatry. Not eligible for membership are lawyers, social workers and non-psychiatric behavioral scientists — psychologists and sociologists — although obviously many of these know much more about forensic psychiatry than some who meet the qualifications for membership. The American Psychology-Law Society and the American Association of Correctional Psychologists are groups of non-psychiatrist professionals who are interested in forensic psychiatry. Although it might seem self-evident that a forensic psychiatrist would be a psychiatrist, the term “psychiatry” has come to have a widened meaning encompassing those who make psychiatric decisions, and courts are increasingly using non-psychiatrists as “forensic psychiatric” witnesses; correctional systems employ non-psychiatrists in much greater numbers than they do psychiatrists.

Seymour Pollack sees forensic psychiatry as being not one field but two. He makes a distinction between *psychiatry and law* and *forensic psychiatry*. He includes under the former heading all psychiatric topics that relate to law but which do not involve actual service to the courts. Advising a state legislature how to amend drug abuse laws, for example, would be a part of *psychiatry and law*. Any aspect of psychiatry may be involved in *psychiatry and law* — clinical, social, community, administrative. The focus is therapy-related and often the doctor-patient relationship is involved. The range of problems is enormous — treatment, consultation, the correctional treatment of prisoners, alcoholism, drug abuse, divorce and custody, workmen's compensation. Pollack distinguishes these applications of psychiatry to the legal system for ends which are not justice-oriented from *forensic psychiatry* proper, which he defines as “the application of psychiatry to legal issues for legal ends,” that is, for the purposes of legal justice. “In this practice, the psychiatric evaluation of a patient is dominated and controlled by, and directed towards, the specific objectives of the rules of law with which that patient is involved. . . . The objectives of forensic psychiatry are thus legal, not medical.”¹

Not all “forensic psychiatrists” would see this as a valid distinction; Pollack has pointed out that this view of forensic psychiatry as an agent of social control has been met with a great deal of criticism, and he cites the writings of, among others, Szasz, Stone, Karl Menninger, Lawrence Kolb, Seymour Halleck, David Bazelon, and Alan Dershowitz.

Suarez and Hunt have taken a different approach; rather than seeing forensic psychiatry as the supporter of the legal system, they would have forensic psychiatrists work to modify the law so as to have it conform more

to psychiatric expertise.

Legal psychiatry should perhaps be the purest example and epitome of social psychiatry. A consultant is or should be someone who does more than accept the task given to him and merely carry it out. Instead, he should rephrase the questions posed to him, redefine and re-identify the problems from his perspective, and then ultimately modify and remold the task for which he is called. For the most part, psychiatrists have failed to do that in their interactions with the legal system. As a result, not only have they disappointed those who call them in as consultants, but they have done very little to bring about a significant contribution on behalf of the psychiatric profession, the greatest of which would be the bringing about of changes within the legal system that would allow it to operate more meaningfully and successfully.²

Many different kinds of functions are performed by forensic psychiatrists, from teaching to testifying to drafting legislation to rehabilitation of inmates, and there is not even general agreement in the subspecialty on appropriate aims.

Forensic psychiatry embraces a number of diverse people – and they are doing very different things. Even when they do the same thing – testifying in court, for example – they reveal wide differences of opinion.

The extent of the differences that may divide forensic psychiatrists is illustrated by the testimony in recent cases under the Texas “guided discretion” law which provides that after a verdict of capital murder there must be a jury determination of whether beyond a reasonable doubt there is a probability that the convicted person will in the future commit criminal acts of violence that would constitute a continuing threat to society. Some Texas forensic psychiatrists have testified in these cases on the basis of their evaluations that certain convicted persons are sociopaths, and they give such basis for their diagnosis as lack of evidence of remorse. They have testified that sociopaths cannot be rehabilitated. Other forensic psychiatrists have testified in some of these cases that an examination based on a short clinical interview is valueless, that psychiatrists are unable to predict dangerousness accurately except in the short run, that lack of remorse is not a critical factor in the assessment of sociopathy, that sociopathy is a “waste-basket diagnosis,” that there is no scientific evidence for the proposition that sociopathy is completely untreatable, and that many “sociopaths” are burned out at the age of forty and cease to have the troubles with the law that they did in earlier years.

This is more than the usual difference of opinion of two psychiatrists or “battle of the experts.” It represents instead two entirely different concepts of the limitations of forensic psychiatric expertise. This difference in the self-definition of the role of forensic experts is found in relation to many other issues; some experts see their role as a large one and feel they can give authoritative opinions; some experts feel the scientific basis for psychiatric opinions often needs to be explained to the court so that the court can properly evaluate the reliability (or lack of reliability) of speculative testimony.

In 1969 Robey and Bogard suggested that "the complete forensic psychiatrist" must have a great variety of skills and clinical background plus an ability to communicate in the language of the law, in the language of psychiatry, and in plain English. The authors concluded that too many psychiatrists were frightened away from this field by the "spectre of the courtroom" and by the lack of a clear identity and role for the forensic psychiatrist. They suggested that there be an effort to establish and support additional training in forensic psychiatry and that to further assist in creating a specific identity, forensic psychiatry should move towards a specialty board certification.³

The idea has received support and finally implementation. The American Board of Forensic Psychiatry has been formed. It is in the process of examining for its initial certifications.

Some in the field of forensic psychiatry, and more outside the field, oppose certification for forensic psychiatry on a variety of grounds. One obvious objection from psychologists and social workers is that it would make testimony by non-psychiatrists less credible, although much of the testimony in commitment and other areas is increasingly falling by default to non-psychiatrists. An objection from some psychiatrists is that certification would create a small group of "superexperts," a testifying elite whose evaluations and opinions would carry special weight with the court. Legal scholars feel that if the principle of certification is widely accepted the effect will be to close out the field of psychiatric witness to psychiatrists who have not had special training, although the testimony that a court needs is not combined law-psychiatry testimony but competent psychiatric testimony which any psychiatrist with adequate clinical experience should be able to give. Judge David Bazelon has talked about the necessity of challenging the expert's mystique;⁴ the certification of the expert makes the challenge more difficult. Finally, the argument is heard that although certification may give a clearer identity to the subspecialty, this is a spurious clarity, because psychiatric opinions have not reached the stage of great scientific accuracy and should not be bolstered by the additional credibility that comes with special certification.

The Council of the American Psychiatric Association recently supported the concept of certification for the subspecialty of forensic psychiatry, but when this Council Action was presented to the Board of Trustees for its approval, the Board voted to postpone consideration on becoming a sponsoring organization of the American Board of Forensic Psychiatry until it had more information and had given the subject more consideration.⁵

All those in forensic psychiatry are agreed on the value of more training, in the psychiatric residency program and in postresidency fellowships. Courts cannot get good testimony from psychiatrists who have not had a wide exposure to forensic problems and to the literature which differentiates those psychiatric opinions which can be helpful to the courts from those which are less scientific and may be misleading.

There is less agreement on other forensic psychiatric issues — including the basic question of who are forensic psychiatrists and what do forensic psychiatrists do. Until this subspecialty — which although 200 years old has only come into prominence in the last generation — has done more work

defining itself and its relationship to non-psychiatric "forensic psychiatrists," attempts to dignify the forensic expert may represent a premature closure on questions that need time for development and resolution.

References

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