

# **The Consultation Model and Forensic Psychiatric Practice**

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Seymour Pollack developed three categorizing definitions which provided forensic psychiatry with a logical framework for development as a subspecialty of general psychiatry. The first definition separated the body of information related to the interaction of law and psychiatry required by the general psychiatrist from information specific to the subspecialty of forensic psychiatry. The general psychiatrist in any setting should practice with a working knowledge of statutory and case law affecting the practice environment. Familiarity with the law on such issues as informed consent, confidentiality, right to treatment, right to refuse treatment, and involuntary treatment, among many others, provides the practitioner with a legal framework for occurrences that are common to general psychiatric practice.

Having made this distinction, Pollack turned his attention to forensic psychiatry. Pollack characterized forensic psychiatry as a subspecialty area of general psychiatry based on a consultation model.<sup>1,2</sup> Pollack's often debated and controversial definition of forensic psychiatry flows clearly from his view of forensic psychiatry in a consultation framework. Pollack<sup>3</sup> defined forensic psychiatry as the "application of psychiatry to legal issues for legal ends, with the chief goal being the augmentation and support of the rule of law."

Pollack's distinctions between law and psychiatry and forensic psychiatry and his definition of forensic psychiatry are familiar. His view of forensic psychiatry as a branch of consultation psychiatry is less well known and his contribution in this area has tended to be lost. In this article, we attempt to elaborate on the consultation model in some detail and to see how others have conceptualized the field of forensic psychiatry. In addition, we will look at the legal view of the forensic psychiatrist, as an expert, for the purpose of illustrating that this is a term of art in the law which has been misused in the psychiatric literature to describe the role of the forensic psychiatrist.

Writings in psychiatry that have attempted to define the parameters of forensic psychiatry reflect a conflict between the attempt to remain objective

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and the pressures of the adversary system. Robey and Bogard<sup>4</sup> described problems encountered by psychiatrists in communicating the results of forensic evaluations. They attributed these problems to the divergent philosophies and methods of operation between medicine and the law. Halleck<sup>5</sup> suggests that the expert should maintain an adversarial role, but upon being sworn to testify the role should change to that of a "servant of the courts." Rada<sup>6</sup> points to a lack of agreement over how much of an advocate role the expert should play in presenting an opinion and relates psychiatric opposition to the expert role as stemming from role confusion in the courtroom. Tanay<sup>7</sup> sees the forensic psychiatrist as one who "acquires a sense of strategy" in presenting information to the fact finder and suggests that the experienced forensic psychiatrist should serve as an advisor and teacher to the attorney on psychiatric issues in the litigation.

All of these authors are addressing problems created by seeing the psychiatrist as a legal expert. We believe that Pollack's view of forensic psychiatry in a consultation framework would constitute application of a branch of psychiatry with conceptual underpinnings of its own to the legal system. Role change and greater or lesser degrees of advocacy would cease to be of great concern to the forensic psychiatrist. Instead, quality consultation techniques as practiced in other segments of the psychiatric practice would be the role model of choice.

### **The Forensic Psychiatrist as Consultant**

Cavanaugh and Rogers<sup>8</sup> recently proposed using the various types of psychiatric consultation as the basic model for postdoctoral training in forensic psychiatry. Although concentrating on training, Cavanaugh and Rogers<sup>8</sup> point to the obvious implications for the practice of forensic psychiatry. They divide consultation into three types (patient-oriented, consultee-oriented, and situation-oriented consultation) and describe how many of the possible activities of forensic psychiatrists are appropriate to these categories of consultation.

If we look to the community mental health literature for a definition of mental health consultation, we can see the forensic specialist within this model. For example, Caplan<sup>9</sup> defines mental health consultation as "a process of interaction between two professional persons; the consultant, who is a specialist, and the consultee, who invokes the consultant's help in regard to a current work problem with which he is having difficulty and which he has decided is within the other's area of specialized competence." A more recent definition from Mannino *et al.*<sup>10</sup> states that "mental health consultation is the provision of technical assistance by an expert to individual and agency care givers related to specific work related problems."

The type of consultation, as defined by Caplan,<sup>11</sup> which fits most closely

to the practice of forensic psychiatry is client-centered case consultation. This corresponds to what Cavanaugh and Rogers<sup>12</sup> called patient-oriented consultation. In this type of consultation, the primary goal is to help the consultee deal with the presented case. To achieve this goal, the consultant uses his/her specialized skills and knowledge to assist the consultee in making an assessment of the client's problems and to recommend how best to deal with them. In the field of forensic psychiatry, this is accomplished by interviewing the attorney's client and through discussion and written report an attempt is made to assist that attorney in understanding the psychiatric aspects of the case. As with all forms of consultation, in order to be effective the consultant must understand the basic rules of consultation. The role is advisory in nature. The consultant is not a decision maker and has no direct responsibility for acceptance or implementation of recommendations. The consultant must be thoroughly familiar with the goals, objectives, and procedures of the agency or individual with whom he/she is consulting. Furthermore, it is incumbent upon the consultant to learn as much as possible about the rules and ethical principles which govern the consultee's practice.

Consultation theory and practice grew out of the development of two areas in American psychiatry, community psychiatry, and consultation-liaison psychiatry. The community psychiatry viewpoint regarding consultation has been presented above. The consultation-liaison view differs in that it is more restricted to health disciplines and does not distinguish as clearly between types of consultation and the various roles of the consultant. Lipowski<sup>13</sup> defines psychiatric consultation as "provision of expert advice on the diagnosis, management and prevention of mental disorders by specially trained mental health professionals at the request of other health professionals and within the constraints of available knowledge and techniques." Only one area of Lipowski's definition<sup>13</sup> would limit a view of the forensic psychiatrist as consultant and that is his restricting consultation to an interaction between health care professionals. Lipowski<sup>13</sup> proposes this restriction because he believes that there is enough work to do within the health care system and that having psychiatrists work outside the health system spreads the field too thinly. Lipowski<sup>13</sup> also believes that if psychiatrists consult in other areas, there is danger of medicalizing problems which have little to do with genuine medical illness. Certainly Lipowski's concerns<sup>13</sup> mirror the concerns of many other psychiatrists when they view the field of forensic psychiatry as a specialty. Were it not for the prohibition against consulting outside of the health care system, other aspects of Lipowski's definition<sup>13</sup> of psychiatric consultation would apply well to the forensic setting. The forensic psychiatrist should provide expert advice on diagnosis of mental disorder, in some cases advice on management, and

should clearly operate within the constraints of available knowledge. Many of these points have been repeatedly debated in the forensic psychiatric literature.

### **The Forensic Psychiatrist as Expert**

Experts are utilized by the legal system because they possess specialized knowledge. In contrast to ordinary witnesses drawn into litigation due to their first hand knowledge of some aspect of the case, an expert is called upon because of a special skill or training and asked to make an interpretation of facts or events.

At common law ordinary witnesses were not permitted to give opinions. Wigmore's classic textbook<sup>14</sup> on evidence states the "opinion" rule: "where the data observed can be exactly and fully reproduced by the witness so that the jury can equally well draw any inference from them, the witness' opinion is not wanted, and will be excluded." Where a witness' words are not adequate to describe the subject matter sufficiently to permit the jury to draw an inference, lay opinions are generally permitted to prove certain facts. The Federal Rules of Evidence Rule 701<sup>15</sup> provide that these opinions are limited to those which are "(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue."

The expert is called specifically for opinions on a subject which is in dispute and for which the expert possesses the skill or training to interpret facts or events in a manner that is either beyond the competence of the jury or will aid their understanding of the facts so they will reach a more informed decision.

A showing must be made both that the expert possesses sufficient skill, knowledge, or experience and that the opinion or inference will assist the trier of fact in evaluating a fact at issue. The subject of the inference must be specifically related to some special area of training or knowledge of the expert.<sup>16</sup> In addition to ruling on the expert's qualifications, the court must decide that the inferences made by the expert will aid the jury. There is a clear attempt in the federal rules to guard against admitting into evidence expert opinions that tend to usurp the decision-making function of the fact finder.

Criticism of the effectiveness of the procedures of the adversary system in the presentation of expert opinion has led to proposals to utilize the power of the court rather than each advocate to call experts, or to refer specific questions to a master or special forum to avoid the battle of the experts. Generally, these procedures are more the exception than the rule and expert opinion continues to be presented within the adversarial format.

## **Discussion**

We have discussed two major models which describe the role of the forensic psychiatrist, a psychiatric model based on consultation and a legal model based on the role of the expert in legal proceedings. It is interesting to note that the legal role, that of the expert, has been used most frequently in attempting to define the forensic psychiatric role in the psychiatric literature. As we have tried to illustrate, the use of the term expert derives from legal practice and has a specific and limited meaning. It is not helpful in defining the role of forensic psychiatry.

The model of forensic psychiatrist as consultant brings with it other issues relevant to forensic practice that can be explored within the framework of consultation theory. Should psychiatrists practice using the broad consultation framework of community psychiatry theory or a more narrow framework as in consultation-liaison psychiatry? These questions of definition encompass such issues as the separation of diagnostic from therapeutic psychiatry. We have been impressed in our own research<sup>17,18</sup> and in the work of others<sup>19</sup> with the fact that severely mentally ill and deinstitutionalized persons spend time both in the mental health and criminal justice systems. These findings argue for the broad approach in an attempt to channel severely mentally ill persons into more therapeutically oriented environments within the criminal justice system. On the other hand, psychiatrists in court often are highly visible, subject to inordinate media attention, and often say and do things which have a harmful effect on the field of psychiatry as a whole. The good results achieved in many cases may be negated by attention in the highly sensationalized case.

Of equal importance to the question of the scope of consultation are issues related to the ethics of consultation. Instead of examining the ethics of the forensic psychiatrist alone, we should first approach ethical considerations in the field of consultation generally and then look at the particular problems of the forensic psychiatrist. By blurring the distinction between direct and indirect consultation and between consultation and collaboration, consultation-liaison psychiatry attempts to avoid the ethical dilemma of the physician working through someone else. There are profound ethical considerations in the very core of consultation work when a physician works with a patient through another person. These become less compelling in the everyday work world where we know that things are not perfect and we try as best we can to provide high quality care to large numbers of persons. Forensic psychiatry shares these ethical problems and, in addition, like all subspecialties of psychiatric consultation, has ethical problems particular to its own area.

We believe that Pollack's view<sup>1-3</sup> of forensic psychiatry in a consultation

framework was a pioneering step that should be reconsidered. It is proposed here because currently forensic psychiatry needs debate about its own practice models, and general psychiatry needs to be able to view its forensic subspecialists within a practice model that is meaningful within the parameters of psychiatry.

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