Forensic Psychiatry in Private Practice

Herbert C. Modlin, MD; and Alan Felthous, MD

This paper presents statistical and explanatory analyses of 637 forensic psychiatry cases in a private practice setting during the past 12 years, highlighting the remarkable variety of clinical and legal issues addressed by forensic psychiatrists. Emphasis is on how and why forensic psychiatrists need to be expert diagnosticians and clinicians, and ways in which they may respond to difficult clinical and legal opinions are recommended.

The practice of forensic psychiatrists is sometimes limited by their institutional affiliations: prison or jail, security hospital, court clinic, community mental health center, or children's service. Forensic psychiatrists in private practice may encounter a wide, even overwhelming, range of psychiatric-legal issues and problems emanating from their professional involvements with civil, criminal, juvenile, and institutional areas of law. We took a survey at the Menninger Foundation to assess the nature of our forensic practice during the last 12 years, the variety and quantity of cases we have handled, challenging and troublesome medical-legal issues we have addressed, changing patterns in our practice, implications of emerging trends, and lessons we have learned.

Headquarters of the Menninger Foundation's extensive involvements in the private practice of psychiatry are in Topeka, Kansas. The clinical services there include adult and children's hospitals, three outpatient clinics, a department of neurology, neurosurgery, and internal medicine, our department of psychiatry and law, and special programs dealing with sexual dysfunction, eating disorders, and alcohol and drug abuse.

Our adult hospital is not equipped to manage such patients who require strong security measures; consequently, we see 90 percent of our forensic cases as outpatients. Some have had to be examined in jails, penitentiaries, and state hospitals, as well as in our own hospitals. The total number of 1100 Foundation employees includes 70 psychiatrists and 40 psychiatric residents. Nearly all staff members eschew legal cases but support the small department of psychiatry and law, pleased to have a few colleagues interested in forensic work to whom cases can be referred. However, about 90 percent of our cases are directly referred by practicing attorneys; thus

Dr. Modlin is noble professor of forensic psychiatry at the Menninger Foundation, Topeka, KS. Dr. Felthouse is chief of forensic services at the University of Texas Medical Branch, Galveston, TX.

members of our department are essentially in private forensic practice, somewhat separate from the main clinical activities of the Foundation.

Apart from evaluating client-patients and consulting with individual attorneys, we have contracts to perform consultations, clinical evaluations, teaching and research with state hospitals, security hospitals, state and federal penitentiaries, police departments, court services, community corrections, juvenile courts, the state medical licensing board, and law schools. Staff members of our department do engage in some general extraforensic psychiatric practice. At present we estimate the equivalent of one full-time forensic psychiatrist is responsible for the ongoing clinical case load.

General Statistics

The distribution of cases according to year of occurrence and civil or criminal category is presented in Table 1. The actual total number of cases seen was 699, but 62 cases were excluded in the statistical summary because of their having been referred for evaluation under unusual circumstances and their inclusion would have skewed the figures in an unrepresentative way.

Twenty-six civil cases were seen in 1982–83 consequent to the tragic collapse of the Kansas City Hyatt Hotel skywalk in 1981. We considered our involvements with victims of that unusual disaster not representative of ordinary clinical practice.

Because Kansas law recognizes the legal validity of the rape trauma syndrome, ten victims of criminal rape were referred to us by prosecuting attorneys who sought to learn whether the women actually suffered from the rape trauma syndrome; if so, such evidence could aid the prosecution. Their legal status was that of witness. Many states do not yet recognize the validity of the syndrome. Incidentally, our diagnoses were that

Table 1
Clinical Forensic Cases

Year	Civil Law Cases			Criminal Cases			Total N
	Patient	No Patient	N	Patient	No Patient	N	
1975	21	3	24	5	0	5	29
1976	14	6	20	14	0	14	34
1977	14	8	22	17	1	18	40
1978	20	3	23	17	0	17	40
1979	14	6	20	9	0	9	29
1980	24	9	33	27	2	29	62
1981	22	6	28	30	0	30	58
1982	28	6	34	21	1	22	56
1983	34	4	38	22	0	22	60
1984	38	10	48	19	1	20	68
1985	45	16	61	24	0	24	85
1986	39	13	52	24	0	24	76
Totals	313	90	403	229	5	234	637

eight of the women did indeed suffer from the syndrome, essentially a post-traumatic stress disorder; two did not.

Twenty-six cases were seen by the Children's Service through a consulting arrangment with a local juvenile court and its probation staff. The legal requests were for treatment and placement recommendations only. The children were charged with truancy, running away from home, sexual promiscuity, and/or vandalism. We assume that this type of quasiforensic service is seldom offered by private practitioners of adult psychiatry. Ten children are represented in Table 1: two 17-year-old boys tried in adult court for homicide and eight children whose parents initiated personal injury suits in their behalf.

The figures in Table 1 show a significant increase in 1980 in the number of cases seen and a further increase in 1985. The increase followed our addition of manpower and suggest that the potential supply of forensic cases is plentiful. The increase at both points in time was evenly divided: from 1980 on, the increase in criminal cases was 94 percent, in civil cases 91 percent. For the years, 1975–79, we averaged 34 cases a year, compared with 66 a year in the 1980–86 period. Of the 637 cases, 63 percent involved aspects of civil law. That percentage appears to be representative of forensic practitioners' experience generally. Miller (1985) surveyed the membership of the American Academy of Psychiatry and Law and reported that two-thirds of his respondents spent at least 60 percent of their time with civil law cases.

A revelation in our statistics was that in 22 percent of the 403 civil cases we did not examine a client-patient but functioned as a consultant to a legal firm. Table 2 lists the "no patient" civil cases by legal category; one-half were malpractice suits. In half of the 90 civil cases the potential subjects were deceased because of suicide or, in wills and insurance claims, by natural causes. In other cases, examinees were unavailable

Table 2
"No Patient" Cases*

Civil Cases†		Criminal Cases‡	
Malpractice	48	Competence at Time of Trial	2
Competency	18	Effects of Marijuana	2
Will	8	Capital Sentence Hearing	1
Contract	4		
Affairs	6		
Insurance Claim	5		
Personal Injury	5		
Harassment	1		
Class Action Suits	7		
Professional Conduct	5		
Products Liability	1		

* N = 95.
† N = 90.
‡ N = 5.

because (1) they refused to be examined by experts retained by their attorneys' opponent, (2) they were incarcerated in distant states, (3) their present mental states were not at issue, or (4) they had been evaluated medically and psychiatrically, and review of the record was sufficient for legal purposes. The seven class actions suits were against two state hospitals and five jails.

Demographics In a comparison of demographic variables in civil and criminal cases, few differences were noted. Nationwide most criminal offenders are young, male, single, and urban; and blacks are overrepresented in the figures.[1] The fact that nearly half our cases were from rural settings accounts for the disparity between national statistics and our own. National figures regarding gender closely corresponded with ours, but our and their figures regarding age were less similar. Genders of persons in our civil cases were roughly 50/50, whereas the criminal offenders were 91 percent male. Apparently antisocial aggression is a masculine trait irrespective of social habitat. It is of interest that 18 percent of our criminal offenders were older than age 40; one-fourth of them committed domestic homicides. Concerning age, 45 percent of civil litigants were over 40 compared to 19 percent of criminal offenders. In both legal categories there was a nearly even percentage balance between urban and rural places of residence. Rural is defined as any community with a population under 25,000. Of plaintiffs in civil cases, 55 percent were married, compared to 33 percent of criminal offenders. Five percent of civil cases involved blacks; 12 percent of criminal offenders were black.

The occupational distribution seems unremarkable. Compared to the civil cases, the criminal offenders category contained significantly more unemployed and significantly less white-collar workers, students, and housewives. Our initial amazement was at the number of professionals in the criminal category (11 percent), but case analysis revealed that number to be heavily weighted by nine charges of sexual misconduct with children including incest and statutory rape and involving five teachers, two ministers, one physician, and one social worker.

Referrals The figures elucidating our referral sources, Table 3, confirmed our impression: 75 percent of civil cases were referred by plaintiffs' attorneys, 88 percent of criminal cases by defendants' attorneys. In private practice we expect relatively few referrals from civil defendants.

Sixty-three percent of the 403 civil cases pertained to personal injury, workers compensation, job harassment/discrimination, or insurance policy claims, all involving insurance companies. We

Table 3
Referral Sources

	Civil Cases*		Criminal Cases†	
	N	%	N	%
Plaintiff	300	74.4	207	88.5
Defendant	89	22.1	–	–
Prosecutor	–	–	17	7.2
Other	14	3.5	10	4.3

* N = 403.
† N = 234.

have been told by astute defense lawyers that if they retain experts to evaluate the mental and emotional consequences to the victim of accidents and other injuries, they thereby tacitly admit the validity of the claim. They often prefer to ignore, deny, or minimize it.

Also we expect few referrals from criminal prosecutors. When necessary, they can obtain free or low-cost psychiatric service from government facilities, local or state, and need not pay private practitioners from their sometimes limited budgets.

When analyzed year by year and item by item, the figures on referrals do reveal one significant shift. For the first eight years 69 percent of the malpractice claims were referred by plaintiffs' attorneys and 31 percent by defendants'; in the last four years the figures have been nearly 50/50. Anecdotal information from legal colleagues suggests that some insurance companies, impressed by the burgeoning malpractice awards from juries, find it advisable to present cases for an opinion by an expert other than the one engaged by a plaintiff's attorney.

Criminal Cases

Two hundred twenty-nine persons with criminal charges pending trial were evaluated: 167 (73 percent) had been charged with crimes against persons and half of those (53 percent) were charged with homicide or attempted homicide (see Table 4A), but 47 percent were not homicide cases, and of the total 229, only 38 percent involved homicide. In the 85 actual killings, 30 defendants killed 35 relatives (five double murders), 23 defendants killed 23 acquaintances, and 32 defendants killed 41 strangers (two multiple murders).

Our data suggest that the war between the sexes can be lethal: 13 women were slain by husbands. If we add daughters, mothers, stepmothers, grandmothers, sisters, and aunts, 26 women were killed by male relatives. Four girlfriends were

Table 4A
Criminal Cases: Crimes against Persons*

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	Total
Homicide	2	4	6	5	4	8	6	11	5	4	15	7	77
Felony Murder	–	–	1	–	–	–	1	–	1	–	1	2	6
Attempted Murder	–	–	–	–	–	1	–	1	–	–	–	–	2
Conspiracy to Murder	–	–	–	–	–	1	–	–	–	–	–	–	1
Vehicular Manslaughter	–	1	–	–	–	–	–	1	–	–	–	–	2
Armed Robbery	1	1	2	1	–	3	2	1	1	1	1	1	15
Assault	1	1	1	3	3	2	6	1	1	2	3	2	26
Rape	–	2	1	1	–	1	2	2	1	–	1	2	13
Kidnapping	–	–	–	–	–	1	1	–	1	–	–	–	3
Skyjacking	–	–	1	–	–	–	–	–	–	–	–	–	1
Incest	–	–	–	–	–	–	–	–	–	2	1	–	3
Child Molestation	–	–	1	1	–	1	1	–	4	1	2	2	13
Exhibitionism	–	1	–	–	–	–	1	–	1	–	–	1	4
Voyeurism	–	1	–	–	–	–	–	–	–	–	–	–	1
Total/Yr	4	11	13	11	7	18	20	17	15	10	24	17	167

* N = 229.

killed. The victims of the six women defendants included four clearly battering husbands, two daughters of one woman, and one daughter of another. The 13 victimized wives averaged 36 years in age; only one was killed during the first year of marriage.

Being a parent seems quite safe. There were no patricides, although two women were killed by sons. A girl was shot by her brother who was in a nocturnal hypnogogic state. There were two stepbrother victims.

In all the homicide cases, we were asked for our opinion about the defendant's mental state at the time of commission of the offense. However, in 27 cases attorneys indicated practical interest in any psychiatric evidence supporting a finding of diminished capacity. In states not allowing a diminished capacity plea by statute, the attorney is required to file a plea of not guilty by reason of insanity but often indicated to us that there was small hope of meeting the stringent requirements of the insanity standard. Realistically they were looking for mitigating or extenuating evidence, i.e., of diminished capacity.

We agreed that we could reasonably support a finding of diminished capacity in 15 of 23 cases, based on the following clinical conditions:

Borderline Mental Retardation; marked immaturity.
Borderline Mental Retardation; explosive disorder.
Intermittent Explosive Disorder (two cases).
Hypnogogic Dissociated State.
Fugue State.
Depersonalization Disorder.
Dysthymic Disorder; alcohol abuse.
Schizotypal Disorder (two cases).
Residual Schizophrenia; marijuana intoxication.
Organic Brain Syndrome (two cases).
Bipolar Disorder; alcohol abuse (two cases).

In all the cases we were able to demonstrate some impaired judgment due to mental illness. Of the 12 cases we "turned down," two manifested no mental disorder, one presented a situational adjustment disorder, and nine had diagnosed personality disorder, usually with alcohol or drug abuse.

Concerning the basic question of mental responsibility at the time of the crime, we found 43 of the 77 responsible for their behavior, 15 with diminished capacity, and 19 (24 percent) not responsible. In the last category the diagnoses were the following:

Schizophrenic Disorder (13 cases).
Manic Psychosis.
Paranoid Psychosis.
Mental Retardation; pathological intoxication.
Organic Brain Syndrome; pathological intoxication (two cases).
Schizo-affective Disorder; Capgras syndrome.

In analyzing the 33 persons charged with crimes against property (represented in Table 4B), we thought most of the referrals appropriate, i.e., that the attorneys had exercised reasonable judgment. For example, we diagnosed true kleptomania in the four shoplifting cases involving two teachers and two housewives. Most of the burglary and theft cases were drug related, although that finding was of minimal help legally. In a few cases the attorney was able to get his client into a diversion program. We determined that one of the four arsonists was psychotic and one was mentally retarded. In the six embezzlement and income tax evasion cases, we found that

a teacher suffered a manic psychosis but could diagnose only a personality disorder for three attorneys, a physician, and a businessman.

In the miscellaneous category (see Table 4C), the eight "fitness for release" problems were referred by the state parole board or a state hospital. The question posed in each case was of future dangerousness to the community. The three parole cases involved men convicted of sexually molesting a daughter or stepdaughter. It is of interest that in no case involving a violent crime was our opinion sought by the parole board. We learned from board members that returning a sexual molester to the community is likely to stir up criticism against the board. In these three cases and one other, a boy who killed his brutalizing father, we were able to point out that they had never been a danger to the community at large. The boy and the other four had all been judged insane at the time of their committing homicides. We estimated that three were safe for release and two were not.

Competency In 48 cases we were requested to evaluate the competency of the accused to stand trial. Nine were referred for competency determination only. We agreed that three were not competent (schizophrenic disorder, two cases; atypical psychosis, one case). Our opinion was sought concerning competency and responsiblity in 39 cases. We found seven not competent, all with a schizophrenic diagnosis. We supported

Table 4B
Criminal Cases: Crimes against Property*

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	Total
Burglary	1	1	–	1	–	1	5	1	–	1	–	1	12
Arson	–	–	–	–	–	2	1	–	1	–	–	–	4
Theft	–	–	–	1	–	1	–	–	1	1	–	–	4
Shoplifting	–	–	1	–	1	1	1	–	–	–	–	–	4
Embezzlement	–	–	1	–	–	–	–	–	1	–	–	1	3
Income Tax Evasion	–	–	–	–	1	–	–	–	1	–	–	1	3
Possessing Firearms	–	1	–	–	–	–	–	–	–	–	–	–	1
Possessing Burglary Tools	–	–	–	–	–	–	–	1	–	–	–	–	1
Vandalism	–	–	–	–	–	–	–	–	–	–	–	1	1
Total/Yr	1	2	2	2	2	5	7	2	4	2	–	4	33

*N = 229.

Table 4C
Criminal Cases: Miscellaneous

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	Total
Competency	–	–	–	2	–	2	1	–	–	3	–	1	9
Fitness for Release	–	–	1	1	–	1	1	1	1	1	–	1	8
Effects of Marijuana	–	–	–	–	–	1	–	–	1	–	–	–	2
Violation of Parole	–	–	–	–	–	–	–	–	–	–	–	1	1
Presentence Evaluation	–	–	–	–	–	–	–	–	1	3	–	–	4
Capital Punishment Hearing	–	–	1	–	–	–	1	–	–	–	–	–	2
Prison Escape	–	2	–	–	–	–	–	1	–	–	–	–	3
Total/Yr	–	2	2	3	–	4	3	2	3	7	–	3	29

a "not competent" plea in 21 percent of the 47 cases. We were requested also to determine competency to make a confession, to waive legal counsel, or to plead guilty in four of the above cases, all of whom we considered competent. Conscientious defense attorneys do grasp at straws.

Civil Cases

A quick scan of Table 5, listing the 403 civil cases, reveals few significant trends or changes through the 12 years, except for the previously noted steady increase in referrals since 1980. For the most part, the kind of referral remained approximately constant. A trend toward increased referrals is evident: products liability cases (first six years, four cases; next six years, 14 cases), class action suits (first six years, two cases; next six years, 10 cases). The increased case load we handled in the latter category is a consequence of department staffing. Dr. William Logan joined the Department in 1985 from a prior position in the Federal Bureau of Prisons, bringing with him an expertise in evaluating prison operations.

Fifty-five percent of the 403 civil cases involved personal injury suits or workers compensation claims. It is no secret that the personal injury field is a large and lucrative one for attorneys and that medical evidence is necessary in nearly all cases. Our survey revealed an impressive

Table 5
Civil Cases*

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	Total
Personal Injury Claims													
Traffic Accidents	7	5	9	7	7	6	8	9	4	5	9	8	83
Products Liability	1	–	–	2	–	1	2	4	5	–	1	2	18
Wrongful Death	–	–	–	–	–	–	–	–	–	–	3	–	3
Assault Victim	–	–	1	–	1	2	–	2	1	–	2	–	9
Rape Victim	1	1	1	2	–	1	–	1	1	1	1	–	10
Child Abuse Victim	–	–	–	–	–	–	–	–	2	–	2	–	4
Workmen's Compensation Claims	10	6	3	6	5	10	6	4	5	18	12	11	96
Insurance Claims	–	1	–	1	–	–	1	–	–	1	1	–	5
Competency													
Wills	2	–	2	–	–	1	2	1	–	–	–	–	8
Contracts	1	–	1	–	–	1	–	1	–	1	–	–	5
Managing Affairs	–	1	–	–	–	–	–	–	1	1	2	1	6
Being a Witness	–	–	–	–	–	–	–	–	–	–	–	1	1
Discrimination/Harassment	1	–	–	1	1	2	4	1	4	2	2	8	26
Malpractice	1	3	3	3	4	5	4	6	13	14	14	7	77
Impairment to Work	–	1	–	–	–	1	1	1	1	3	4	6	18
Child Custody Dispute	–	1	2	1	1	–	–	2	1	–	3	3	14
Involuntary Hospitalization	–	–	–	–	–	3	–	–	–	–	1	–	4
Embezzlement	–	–	–	–	–	–	–	1	–	–	2	–	3
Negligent Custody	–	–	–	–	–	–	–	–	–	–	–	1	1
Class Action Suits	–	1	–	–	1	–	–	1	–	2	3	4	12
Total/Yr	24	20	22	23	20	33	28	34	38	48	61	52	403

* N = 403.

number of persons referred with workers compensation claims pending. From the attorneys we learned that insurance carriers uniformly resist payments of claims based only on psychiatric symptoms and that disabled workers have to retain an attorney for assistance in pursuing their claims.

In a number of the civil categories, lawsuits were filed against a third party. Parents of the four child abuse victims sued schools in behalf of their offspring charging negligence in the hiring or supervision of the offending teachers. The 10 rape victims sued hotels, industrial plants, a college, a penitentiary, and a hospital for negligence regarding such matters as faulty door locks, inadequate security operations, and poor lighting.

We came to appreciate the observation of our legal informants that with the advent of no fault divorce laws, the only cogent battleground left is child custody; we were involved in 14 such cases.

Harassment/Discrimination Two recognizable changes are illustrated in Table 6 through the years: malpractice claims and harassment/discrimination suits. In the latter category we saw five cases in the first six years and 21 cases in the second six years, a 300 percent increase. The claims were as follows:

> Sexual harassment, brought by four women against employers.
> Consumer harassment, brought by three men against a bank and an airline.
> Unfair dismissal from a job: charges of racial discrimination were brought by six blacks, gender discrimination by two women, discrimination because of being a union representative by one teacher, and discrimination because of religion by one black Rastafarian. There were nine other cases claiming unfair accusation of job incompetence, unfair firing following a job-related injury, unfair firing following a period of mental illness, and unfair termination because of emotional upset caused by working conditions.

In each case, our task was to evaluate disability resulting from the presumably stressful job situation. We found one major depressive disorder, two dysthymic reactions of significant proportions, four cases with no mental illness (essentially four angry ex-employees), and 19 instances of situational adjustment with mood disorder but minimal overall disability.

Malpractice The figures in Table 6 demonstrate that for the first eight years the number of malpractice referrals was quite uniform, averaging 3.6 a year. For the past four years the number of refer-

Table 6
Civil Cases: Malpractice*

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	Total
Patient Examined	–	–	–	2	–	1	2	2	11	6	4	1	29
No Patient	1	3	3	1	4	4	2	4	2	8	10	6	48
Total	1	3	3	3	4	5	4	6	13	14	14	7	77
Seen for Plaintiff	1	1	3	2	3	3	2	5	6	8	6	5	45
Seen for Defendant	–	2	–	1	1	2	2	1	7	6	8	2	32
Total	1	3	3	3	4	5	4	6	13	14	14	7	77

* N = 78.

rals increased 300 percent to over 12 a year. The increase occurred comparably in mental health and general medical cases. In 54 cases (69 percent) the defendants were mental health professionals and/or mental health institutions including psychiatric hospitals, psychiatric units in general hospitals, and community mental health centers. The accused professionals included 46 psychiatrists, five psychologists, and three social workers. In 49 cases (63 percent) there was no patient to examine and we functioned as consultants to legal firms.

In 12 of the 77 cases (15 percent), sexual misconduct was claimed. The defendants included the five psychologists and three social workers, as well as two psychiatrists, one family physician, and one chiropractor. All the psychologists and social workers were employed by hospitals or mental health centers. Institutions employing them also were sued, usually with a charge of negligent hiring and/or inadequate supervision.

The 24 nonmental health defendants included five general hospitals, seven obstetricians/gynecologists, six surgeons, four family physicians, one anesthesiologists, and one chiropractor. In most of such cases the legal request was for a determination of patient disability, not an estimate of negligent practice. However, in reviewing the data we were surprised to discover that we did voluntarily express an opinion concerning negligent practice in seven cases: one suicide and two attempted suicides, negligent management of one delirious patient, negligent prescription of addictive drugs for one patient, and two cases of alleged sexual misconduct.

Of the 30 cases in which plaintiffs' attorneys requested a determination regarding negligent medical practice, our opinions were in agreement with 80 percent of the attorneys'. The legal system of contingency fees may have merit; most lawyers eschew investing time in doubtful cases. In the 31 defendants' cases involving a determination of negligence, we agree with 71 percent of the attorneys. Defense attorneys who work for insurance carriers have less choice than their legal counterparts in accepting cases; however, they can exercise some judgments. In our experience a common investigative technique they use is a discovery deposition of the opposing expert. With that information the defense attorney can recommend to the insurance company which cases to settle and which to contest. In the latter instance, he may retain a psychiatrist to review the case. These results suggest that both plaintiff and defense attorneys tend to evaluate cases with perceptiveness.

There was an increase in referrals by defense lawyers in the past few years to a nearly even distribution between plaintiffs' and defendants' cases. We welcome this development; it helps to keep us balanced.

Quasiadversarial Cases The label chosen for the following 18 cases is a convenient waste basket rather than a precise designation. It includes cases under the jurisdiction of medical and legal licensing boards, hospital medical staffs, two school boards, and one community mental health center board. The basic question in each instance was the ability of the subject to practice his profession competently and/or ethically. Some of

the subjects had retained an attorney; others had not. None of the cases had been filed with a court. There was, however, an adversarial climate in that each subject was protesting a threat of action against himself or petitioning for beneficial action by a hesitant board.

These cases represent a kind of spin-off from customary forensic practice. In discussions with attorneys and representatives of several referring agencies we learned that, in the context of such cases, forensic psychiatrists are viewed and valued primarily as professionals willing to address difficult issues involving other professionals and to provide conclusions and recommendations in written reports or oral testimony, i.e., to stick their necks out.

In most of the cases we were asked for a psychiatric evaluation with analysis, when indicated, of personality or characterological traits. We were not actually asked whether they were qualified to practice law, teach, or do therapy. However, the "bottom line" question was, "Can they be trusted with patients, clients, or students?" This question may subtly nudge the psychiatrist to render a decision on the legal issue, which is not our function.

The cases involved nine physicians, three attorneys, two teachers, one psychologist, one minister, and two policemen. Four physicians and two attorneys were examined because of the question in each case of whether or not to grant, revoke, or restore a license to practice. Also, we were asked to advise whether two physicians should have their hospital privileges denied and whether one judge should be removed from the bench. Each of two policemen, shot in the line of duty, suffered a posttraumatic stress disorder.

Testimony As illustrated in Table 7, we appeared as formal expert witnesses 232 times over the 12-year period, in approximately 36 percent of the 637 cases. The number of appearances a year was quite uniform until 1983, averaging 13 a year. In the last four years the average rose to over 30 a year, an increase consonant with the overall in-

Table 7
Expert Witness Appearances

Case N	Year	Trials			Hearings			Depositions			Total
		Civil	Criminal	N	Civil	Criminal	N	Civil	Criminal	N	
29	1975	3	2	5	–	1	1	3	1	4	10
34	1976	2	5	7	1	–	1	7	–	7	15
40	1977	2	6	8	–	3	3	4	–	4	15
40	1978	3	1	4	1	1	2	1	–	1	7
29	1979	2	3	5	–	–	–	2	1	3	8
62	1980	1	7	8	–	1	1	4	–	4	13
58	1981	5	6	11	2	1	3	4	7	11	25
96	1982	2	4	6	–	2	2	4	1	5	13
60	1983	8	4	12	3	2	5	11	–	11	28
68	1984	6	3	9	4	1	5	13	3	16	30
85	1985	4	7	11	3	2	5	15	1	16	32
76	1986	4	6	10	7	9	16	8	3	11	37
Total 677		42	54	96	21	23	44	76	17	93	233

crease of referrals in the four-year period. Thus the yearly percentage of appearances actually varied little through the 12-year span. The majority of our trial appearances were in criminal actions—23 percent of the cases, as opposed to only 10 percent of the civil cases. However, 87 percent of the depositions involved civil actions, usually followed by settlement of the case without trial. The increase in civil case depositions in recent years is due to the increase in malpractice suits.

The settings for the 45 judicial hearings were varied and, for the civil cases, included appearances before district courts, magistrate courts, workers compensation administrative judges, social security disability service hearing judges, courts martial, and state medical, dental and law boards.

Observations

In this paper, citations from the literature are sparse because we could find few studies of private forensic practice, particularly with regard to civil cases. There are many reports from such institutions as hospitals, prisons, jails, and court clinics because they maintain records which allow an interested investigator to study 100 murderers, 25 arsonists, or 50 child molesters. Similar data from private medical practice seem almost nonexistent.

Statistics regarding homicide are plentiful, and our data seem consonant with some published reports except for the proportionately lower representation of nonwhite subjects in our figures. Daniel and Holcomb[2] estimate that one-third of homicides are intrafamilial, statistically close to our 36 percent. In their study of 213 men who killed, 70 percent of intrafamilial victims were women, and 70 percent of extrafamilial victims were men. Our figures are 80 percent and 90 percent, respectively. Again, the differences may be due to their large representation of blacks among whom numerous men killed extrafamilial women.

Tanay's study of 53 homicide perpetrators he examined in private practice reports an incidence of 44 percent intrafamilial murders (ours, 35 percent), 44 percent acquaintances (ours, 28 percent) and 15 percent strangers (ours, 37 percent)[3]. Daniel and Holcomb[2] found a significantly higher frequency of psychotic diagnoses in intrafamilial violence. Our figures agree: 23 percent of intrafamilial killers as compared to 14 percent of extrafamilial merited a psychotic diagnosis. In comparing rural and urban cases, both Tardiff[4] and Jason *et al.*[1] found little difference in primary homicide rates but a wide difference in secondary homicides (felony murder), most of them in cities. Five of our six felony murders occurred in urban areas.

Our private practice experience may vary from others' in several respects. There can be geographic and population differences such as mostly urban referrals, large minority populations, regional socioeconomic conditions, and subcultural systems of value. Also, individual practitioners often develop special interests. In our group practice Dr. Modlin is known for his interest in the posttraumatic stress syndrome, personal injury suits in general, and his work with impaired physicians. Dr. Felthous is a

specialist in adolescent psychiatry. Drs. W. Walter Menninger and William Logan have expertise in working with police departments, community rehabilitation and diversion programs, and prisons. Dr. Roy Lacoursiere is particularly knowledgeable regarding alcohol and drug abuse. Such specialization becomes known to the network of referring attorneys and each psychiatrists' caseload becomes weighted with specific types of cases. The nature of our practice may be influenced also by our teaching for the past 25 years in both of the Kansas law schools. Many Kansas attorneys have thus acquired some familiarity with psychiatric thinking and the possible uses of psychiatric testimony and feel comfortable in consulting us.

Another aspect of our work which may not be widely representative of general forensic practice is in that nearly half our forensic time was devoted to a variety of services to institutions and agencies, and their referrals of specific case problems to us were frequent. As mentioned previously, they included state medical, dental, and legal licensing boards, workers compensation commissions, administrative judges, hospital medical staffs, state and security hospitals, parole boards and various other administrative boards.

Our statistical study documents a phenomenon known to most forensic psychiatrists: the change in fashions in legal practice over the years in response to technological developments, medical discoveries, or evolving social attitudes. For example, we evaluated several toxic shock cases in the 1970s, but their numbers later dwindled to zero; the record of skyjacking cases was similar. The number of rape victim referrals increased dramatically. In the later years case referrals involving child molestation, workers compensation, discrimination/harassment, and malpractice became common. The legal profession, at least in the central states, only recently discovered the "battered wife syndrome" as a defense in spouses' homicides. We first diagnosed the syndrome in 1985 and three more times in 1986.

In spite of all the potential variables, it is possible to consider that our statistics approached a national norm. One basis for such a view is that our group practice comprised individuals with varied interests and capacities. Most of our referrals were in fact from the central states but we had a plentiful sampling from New York to Hawaii and Florida to Alaska. Also, our 50/50 balance of urban and rural cases inhibits undue weighting from any one type of community.

Conclusions

An overall view of our clinical forensic practice in the past 12 years highlights the remarkable variety of legal issues the forensic psychiatrist may be asked to address. Table 5 lists 27 different criminal offenses our patient-clients were charged with, and the civil categories listed in other tables are nearly as numerous. The forensic specialist who is willing to respond to these opportunities and challenges attains an intimate and sometimes unique view of life's vicissitudes, from explosions of raw aggression to episodes of bad luck in which accused and accuser may be equally victimized.

The competent forensic psychiatrist is perforce an experienced clinician and an expert diagnostician. In evaluating our cases we used every major adult diagnostic category in DSM-III (1980) but one—factitious disorders. We had to become informed about the possible behavioral manifestations of temporal lobe seizures, the physiological effects of two marijuana cigarettes, the long-term cognitive defects in closed head injuries, the paranoiac hazard in deafness, and the adult sequelae of a childhood learning disability. We had to assess the state of the art understanding of multiple personalities, fugue states, and depersonalization phenomena and explain their relation to episodes of aberrant behavior. We needed to address the fine differences among schizophreniform disorder, residual schizophrenia, and undifferentiated schizophrenia and apply them to problems of individual behavior, judgment, and responsibility.

Finally, we found we had to respond as best we could to frequent demands for prognoses, both clinical and legal. In forensic work this issue cannot be sidestepped. To serve the needs of the law and the plaintiffs, defendants, and victims we evaluated, we ventured estimates of immediate and future dangerousness, possible recidivism, and future disability and treatability, uneasily aware that the passage of time would prove us wrong in some instances. We learned to adapt to the legal dictum that the client has only his one day in court to achieve resolution of his legal problem.

We learned that the practitioner of forensic psychiatry must modify some traditional medical beliefs, roles, and procedures, and we found this possible without needing to compromise basic values of clinical practice or professional integrity. In retrospect we realize that as participants in given cases we may have been overzealous, underskeptical, inadequately enlightened, or insufficiently prepared. We learned more than a little from challenging cross-examination, which made us rethink our professional relationships to the various parties involved, the validity of our data, and the appropriate degree of certitude in presenting our opinions. Forensic psychiatrists who brave the legal crucible can be consumed or maimed, or they can emerge from its tempering competent, poised, and confident that the service they offer is socially contributive.

References

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