

Alan Stone and the Ethics of Forensic Psychiatry: An Overview

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In 1982, Alan Stone presented a keynote speech at the Annual Meeting of the American Academy of Psychiatry and the Law (AAPL) on the ethics of forensic psychiatry. That speech was sharply critical of the prevailing ethics standards and led forensic psychiatrists to study his ideas carefully. A quarter-century later, he returned to the AAPL's Annual Meeting to present his current thinking. This overview outlines the development of Stone's thought over 25 years and the dialectic among Stone and three critics: Paul Appelbaum, Ezra Griffith, and Stephen Morse. Stone is now more optimistic about the possibility of developing an ethic for forensic psychiatry.

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On October 19, 2007, at the 38th Annual Meeting of the American Academy of Psychiatry and the Law, Alan A. Stone, MD, the Touroff-Glueck Professor of Law and Psychiatry at Harvard, presented his current views on the ethics of forensic psychiatry.¹ Commentaries were offered by Paul Appelbaum, MD, Ezra E. H. Griffith, MD, and Stephen J. Morse, JD, PhD, all of whom have addressed Stone's ideas in their own ethics projects. Their commentaries are published in this issue. In addition, earlier relevant writings by and about Stone that have appeared in the *Journal* (then the *Bulletin*) are also included.

Alan A. Stone, MD

On October 22, 1982, Stone went to the AAPL Annual Meeting in New York to deliver his keynote speech, "The Ethics of Forensic Psychiatry: A View From the Ivory Tower."² Anyone who heard his presentation remembers it vividly. The speech expanded on his earlier work in which he argued that psychiatry, which called itself scientific, was burdened with hidden moral biases. In the speech, he introduced the case of Dr. Leo, supplementing "The Parable of the

Black Sergeant,"³ which had been central to his American Psychiatric Association Presidential Address in 1980. Stone argued that psychiatry had almost nothing to say of any use in the courtroom and that forensic psychiatrists, consciously or not, were prone to violating the ethics boundaries proper to a physician.

Stone identified ethics-related problems that had been largely unexamined, but deserved the closest scrutiny. These included testifying with certainty but with uncertain knowledge; the temptations, conscious or unconscious, of harming or helping forensic evaluatees; and overidentification with the side that hires. Crucial was that the forensic psychiatrist could not escape acting as a double agent because he could not combine the traditional goal of beneficence with the simultaneous task of trying to serve the interests of justice. The ethics of forensic psychiatry, Stone concluded, were in chaos.

He himself would not testify in court, and cautioned those who did that they were taking a grave moral risk. But he did not say, as is commonly believed, that testifying in court was, *prima facie*, unethical or immoral. In his current formulation, he describes his own refusal as arguably a moral failure.¹

All of this he said to forensic psychiatrists, who were confused about their roles as experts and physicians, still struggling for an identity, often regarded as unprincipled by the medical world, and trying to

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separate themselves from unscrupulous doctors attracted to such a specialty. It is not surprising that the reaction of the audience was largely negative and sometimes hysterical. One prominent forensic psychiatrist compared Stone's admonitions to the Reverend Jim Jones' directing his followers to drink poisoned Kool Aid.¹

Nevertheless, it was immediately clear that Stone's challenge could not be ignored. More measured and thoughtful responses came quickly. And, in fact, a single issue of this *Journal* (then the *Bulletin*) was devoted to his speech,⁴ with nine responses by distinguished forensic psychiatrists of the day. Since that time, Stone's challenge has been discussed in almost every paper on forensic ethics.

Today, Stone has added concerns. Central is the trend toward biological reductionism. He does not believe that the important discoveries in the neurosciences will reveal just what we need to know in order to understand what makes a person break the law.

A bit of good news, too. He finds the ethics of forensic psychiatry more comprehensible now. He continues to find its borders fluid but its "ethical terrain . . . seems less a hazardous wasteland than it did 25 years ago."¹ But that comes with a Stoneian twist. Even if forensic ethics had not provided itself with a firmer basis, it would look better today because of the deplorable state of the entire ethics system of medicine.

Paul S. Appelbaum, MD

In the audience in 1982 was Paul Appelbaum, MD, one of Stone's former students. He was just two years out of residency, but his youth did not prevent his disagreement with his teacher. He believed that presenting the truth was the primary task of the psychiatrist in the courtroom⁵ and that he or she must do so both subjectively and objectively, so far as that can be achieved. That concept has been central to Appelbaum's later work.

In "The Parable of the Forensic Psychiatrist,"⁶ Appelbaum argued that forensic psychiatry must have a different ethic than that of clinical psychiatry, an ethic based on truth rather than beneficence. Subsequently, Stone countered that he had no confidence "in the guiding principle of truth as an effective means of preventing the slide into ethical chaos" (Ref. 7, p 84) and that Appelbaum failed to deal

adequately with the double agency of the forensic psychiatrist.

In 1996, Appelbaum presented to AAPL his fully developed thinking in his Presidential Address. Published as "A Theory of Ethics for Forensic Psychiatry,"⁸ Appelbaum's debt to Stone was apparent, although his differences were clear. He elaborated in detail his belief that forensic psychiatry serves justice. Appelbaum's ethics theory requires the fundamental principles of truth-telling and respect for the individual. However, unlike clinical psychiatry, the goal is not to serve the welfare of a patient, but to advance justice, a far different role for a psychiatrist. Stone's notion that psychiatrists are tied to the single ethic of beneficence and non-maleficence is wrong. A different role requires a different ethic.

Appelbaum's theory has great appeal to forensic psychiatrists. As Stone noted in his AAPL presentation, the theory is standard.¹ Stone compares Appelbaum to James Madison because of Appelbaum's having organized and made coherent the messy state of forensic ethics. I agree, of course, but since Appelbaum identified the intuitive ways American forensic psychiatrists think, I would extend the metaphor. Appelbaum may be Madisonian, but forensic psychiatrists are all Appelbaumians.

Ezra E. H. Griffith, MD

In 1997, one year after Appelbaum's Presidential Address at the Annual Meeting of AAPL, Ezra E. H. Griffith, MD, Professor of Psychiatry and African-American Studies at Yale, joined the debate. He delivered his own Presidential Address, "Ethics in Forensic Psychiatry: a Cultural Response to Stone and Appelbaum."⁹ As the title indicates, it was not enough simply to do battle with Stone; he had to take on Appelbaum at the same time. His Presidential Address was powerful, and like Stone's 1984 AAPL address, it is now a classic.¹⁰

Both Stone and Appelbaum, he said, neglected the centrality of the cultural context in a forensic ethic. Griffith emphasized that nondominant groups have unique experiences that provide a perspective that is at odds with that of the dominant culture, but the dominant culture governs the courts.

Starting with the same narratives as Stone, Griffith argued that in cases in which a person from a minority group is evaluated, a forensic psychiatrist must attune the evaluation to include the evaluatee's nondominant status. To what extent has his being sub-

jected to racism influenced his actions before the law? To what extent is it possible that the accused can find justice when he, like many, sees the judicial system “as an institution plagued by racism?” (Ref. 11, p 380).

It is no remedy, Griffith asserted, for the psychiatrist to stay out of court as Stone has chosen. Nor had Appelbaum included in his truth-telling function an effective method to assure that the examining psychiatrist considers relevant components in attempting to understand the narrative of the nondominant person completely. Just as there is no person who “happens to be black,” there is also no “color-blind” ethic. By providing us with a cultural narrative, Griffith has given us the opportunity to expand and correct our general ethics perspective.

One cannot follow Griffith’s work in progress without becoming captivated. He always seems to be aching to get it right. You can hear him saying, “Wait, I sense there is more to this” or “Is this solution just?” Griffith wants a “cultural formulation,” but with a “determination to seek the truth and to leave the chips wherever they [fall]” (Ref. 9, p 182).

Stephen J. Morse, JD, PhD

For the past 30 years, Morse has made seminal contributions to the literature of law and mental health. Morse, who is both a lawyer and a psychologist, is now the Ferdinand Wakeman Hubbell Professor of Law at the University of Pennsylvania.

Like Appelbaum, Morse was Stone’s student, but at Harvard Law School. He was influenced by Stone’s work, but even from the beginning he demonstrated an independent and skeptical mind. His challenges were widely noted. Indeed, the first citation in Stone’s original speech was Morse’s article, “Failed Explanations and Criminal Responsibility.”¹² That article lays out in luminous detail the hazards for the psychodynamic expert. Its style is like all his work: vivid, insightful, and clear, despite the recondite topics that he explores.

Morse has examined the place of responsibility and personal agency within the law and the implications for the place of psychiatrists and psychologists in court. As it turns out, his ethics theory is consistent with Appelbaum’s, but it is more restrictive. Testimony by mental health professionals may have value, but the value is limited. There is no place, except in the rarest exceptions, for making a determination

based on the neurosciences.¹³ Like Stone, although respectful of the sciences, he allows no speculative intrusions from anyone, ranging from psychoanalyst to neuroscientist. He has, for example, been insistent that a biological phenomenon (such as the lack of myelination in adolescents) is not an argument for exculpation for a deed, such as committing a murder. Nor should experts ever even consider free will.¹⁴

He has long maintained that the expert’s focus in a courtroom must be on psychological description. There is almost no place for diagnosis, although a psychiatrist can be quite helpful, for example, in giving a psychological description of the accused. The judge and jury may use that information, not available otherwise, to make a more informed judgment of the accused’s reasons for his actions.

Not the least reason for my valuing Morse’s work is that his ethics position is very close to my own. At times when I have found that my ideas of limiting the testimony of the expert to description¹⁵ were received unfavorably, Morse’s work has been a useful weapon of defense (and counterattack!).

An Appreciation

I wish to end by expressing two truths about Stone. One is objective and the other subjective, although they qualify only loosely as Appelbaumian. Objectively, forensic psychiatrists are grateful to Stone for identifying and continuing to comment intelligently on the ethics of forensic psychiatry. Ethics, neglected or ignored before Stone, are now center stage. Contrary to his adversaries’ predictions a quarter century ago, his critiques have not doomed forensic psychiatry; they have made it better intellectually and morally. Subjectively, I was moved at the AAPL panel to see how beloved Stone is by his students. All the commentators, spontaneously and independently, expressed their heartfelt thanks to their mentor. Appelbaum knew that he wanted to become a forensic psychiatrist as soon as he met Stone; Griffith thanked Stone for the many beneficences he had received throughout his professional life; and Morse described how his academic career was jump-started thanks to the generous efforts of his teacher. In fact, every forensic psychiatrist owes thanks to Alan Stone.

References

1. Stone AA: Ethics in forensic psychiatry: re-imagining the wasteland after 25 years. Presented at the 38th Annual Meeting of the American Academy of Psychiatry and the Law, October 19, 2007

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2. Stone AA: The ethical boundaries of forensic psychiatry: a view from the ivory tower. *Bull Am Acad Psychiatry Law* 12:209–19, 1984, a shortened version of *The ethics of forensic psychiatry: a view from the ivory tower*, in *Law, Psychiatry, and Morality*. Washington, DC: American Psychiatric Press, 1984, pp 57–75
3. Stone AA: Presidential address: conceptual ambiguity and morality in modern psychiatry. *Am J Psychiatry* 137:887–91, 1980
4. *Bulletin of the American Academy of Psychiatry and the Law* 12:205–302, 1984
5. Appelbaum PS: Psychiatric ethics in the courtroom. *Bull Am Acad Psychiatry Law* 12:225–31, 1984
6. Appelbaum PS: The parable of the forensic psychiatrist: ethics and the problem of doing harm. *Int J Law Psychiatry* 13:249–59, 1990
7. Stone AA: Revisiting the parable: truth without consequences. *Int J Law Psychiatry* 17:79–97, 1994
8. Appelbaum PS: A theory of ethics for forensic psychiatry. *J Am Acad Psychiatry Law* 25:233–46, 1997
9. Griffith EEH: Ethics in forensic psychiatry: a cultural response to Stone and Appelbaum. *J Am Acad Psychiatry Law* 26:171–84, 1998
10. Gutheil TG, Hauser M, Spruiell G, *et al*: Letter. *J Am Acad Psychiatry Law* 32:340, 2004
11. Griffith EEH: Personal narrative and an African-American perspective on medical ethics. *J Am Acad Psychiatry Law* 33:371–81, 2005
12. Morse SJ: Failed explanations and criminal responsibility: experts and the unconscious. *Va Law Rev* 68:973–1084, 1982
13. Morse SJ: New neuroscience, old problems, in *Neuroscience and The Law: Brain, Mind and the Scales of Justice*. Edited by Garland B. New York: Dana Press, 2004, pp 157–98
14. Morse SJ: The nonproblem of free will in forensic psychiatry and psychology. *Behav Sci Law* 25:203–20, 2007
15. Miller GH: Criminal responsibility: an action language approach. *Psychiatry* 42:121–30, 1979