

Charting a New Course for Forensic Psychiatry

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Forensic psychiatry has become a well-recognized subspecialty of psychiatry. It has widespread recognition with several well-known, high-impact journals and a vigorous range of international and national forensic psychiatry associations and meetings. In North America, the American Academy of Psychiatry and the Law (AAPL) stands large as the national association representing not only the forensic psychiatrists of the United States but also from Canada and the rest of the world. Its Journal, and its predecessor the Bulletin, is well read and respected. The national meeting of AAPL is well attended and is considered one of the world's most important annual forensic psychiatry meetings. It brings together specialists from all over the world, and the academic and professional content is of a high caliber.

AAPL describes forensic psychiatry as a medical subspecialty that includes research and clinical practice in the many areas in which psychiatry is applied to legal questions, and the organization identifies ethics and human rights as one of the 12 domains where general psychiatry and forensic psychiatry may overlap.¹ AAPL also promotes scientific and educational activities in forensic psychiatry, including producing ethics guidelines for forensic psychiatrists.²

Internationally, the subspecialty of forensic psychiatry is now associated with additional accreditation by national bodies. The training of forensic psychiatrists has led to the definition of high standards for forensic psychiatric practice. Training, ethics, and

legal topics have taken high priority in the development of forensic psychiatry. Two other domains of a subspecialty, research and advocacy, have lagged behind in our opinion. Recent calls to address advocacy are timely, and similar focus must be given to research.^{3,4} There have been few international research studies in our discipline, and most of these studies are not led by psychiatrists.

Forensic psychiatrists pride themselves on being objective, to answer questions posed by third parties, and to be able to separate themselves from what otherwise might be seen as a fiduciary duty to the patient. Forensic psychiatrists are highly trained psychiatrists with deep knowledge of the law, mental health law, and the interaction between mental illness and the law. The forensic psychiatry of AAPL saw itself as primarily about psychiatry in legal or judicial settings, adding in the Ethics Guideline commentary, slightly parenthetically, that correctional psychiatry was also part of its realm.² More recently, within forensic psychiatry we find the recognition that rehabilitation and recovery are inherent aspects of forensic practice.³ This shift is welcomed and has made for a richer and more diverse subspecialty, including those who focus on the interface between corrections, mental illness, risk reduction, and the law. It has also brought into sharp relief some of the gross inequities and injustices affecting our society, and directly our patients. The skills or attributes of objectivity and truth telling make for awkward bedfellows in the face of some of the truths we see unfold before our eyes. We have not turned the obvious impact of these structural themes into research that can inform our practice and deliver better opinions and care.

This leads us to consider the future of forensic psychiatry and the nature and identity of a forensic

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psychiatrist. We find the answers are incomplete, and not so simple. While we are highly trained and knowledgeable in providing service to the courts, lawyers, and individuals who run afoul of the law because of their mental illness, we need to ask whether we are knowledgeable enough about why they run afoul of the law, what brought their situation about, and what we can best do about it, in the interest of such persons and of society more generally. And then, should we grasp these understandings, we must consider our obligation to do something about it, and whether this is a part of the role of forensic psychiatry.

To address these challenges, we must consider where we are and whether we are actively plotting a course to sharpen our vision and practice. We must ask whether forensic psychiatry is contributing to the understanding of human behavior and to the medical enterprise, is actually trying to improve our communities and the communities our patients come from and will go to, serves as an agent of the system that oppresses many or as a solution to their oppression, and is engaged in research on these questions.

In short, we need to question what we are doing to make changes to the system for the betterment of our patients and our society, and, consequently, to make the necessary changes to our discipline that will advance these ends. Unlike many other medical specialties, we are not “assigned” any diseases or bodily systems, and we are not seeking a cure for those we encounter. We deal with people, their lives, and often the tragedies that have occurred in their lives. We should be advocating for more resources to understand psychopathy, antisocial personality disorder, substance use disorders, criminality, poverty, abuse, oppression, and sexual offenders, to name a few areas of concern, and we should be developing effective treatments.

We can answer specific questions for the courts, and we can educate the courts, the profession, and the community about mental illness and its contribution to criminal or violent behavior. We can provide services to those justice-involved individuals with mental illness and, as is often the case, to those whose criminal or violent behavior has led to refusal of service or a paucity of resources. For those who think we are simply servants of the court (or of truth), recent writing challenges us to think more broadly about whose truth is being considered.⁴ Officers of the court with whom we work perceive a higher calling

to justice, which forces us to ask what our higher calling is and whether it resides in the house of medicine whence we came or in the house of justice where we commonly practice.

Forensic and correctional psychiatrists step into the breach where others do not, and we do not shy away from providing services for individuals living with mental disorder and manifesting criminal behavior. These are people who also suffer huge rejection across many dimensions of their lives. We have attempted to understand better the attributes, illnesses, and experiences that contribute to sexual and violent offending. We have worked with systems to improve service for individuals with mental illness and criminal behavior, and we have tried to understand the sorts of services and programs that may better assist individuals who struggle with these problems.

Recognizing some of the important work that has been done and some of the thoughtful writing about ethics in forensic psychiatry, there is still the lingering sense that this is insufficient. There have been towering forces and prolifically thoughtful forensic psychiatrists who have raised their voices about the injustices in our society.⁵⁻⁷ The question is whether their voices are raised beyond the bounds of our subspecialty or within it; in other words, the question is whether this type of advocacy is inherent in who we are as a profession. Sadly, we do not feel our efforts have been to date sufficient in advocacy. The American Psychiatric Association has not managed to stop the death penalty. In AAPL we have the occasional spirited debate, but surely that is insufficient. Merely knowing we have leaders who are passionate and make us feel uncomfortable, is not enough if we return to our usual practice. The challenges and the discomfort we feel should make for meaningful change but whether we rise to the occasion is yet to be seen.

Forensic psychiatrists have a unique opportunity to lend themselves to the betterment of society as we see firsthand some of the difficulties that arise when mental illness and the law collide. We are extremely fortunate to be given the opportunity to see our society at its very best and at its very worst, and we can provide the sorts of insight into key structural difficulties within our societies. Our field of vision, should we choose to perceive it, gives us an incredible opportunity. It has been variously said by a number of individuals that how we treat people who are at

their very worst defines the sort of society in which we live. Nelson Mandela articulated the same sentiment when he wrote, “A Nation should not be judged by how it treats its highest citizens, but its lowest ones” (Ref. 8, p 250). Sadly, it feels that nations have stopped subjecting themselves to this type of self-criticism as we have become hardened in our societies against the plight of others. Forensic psychiatry should not join that trend.

From our unique vantage point, we can see some of these structural difficulties in our society, some of the embedded racial disparities and prejudices, systemic racism, and stigmatization. In short, we see where the determinants of health falter and our society struggles. Key thought leaders in forensic psychiatry continue to debate expert ethics, and although we now have a formalized ethics code, these themes do not sit comfortably with all. At times it feels like an ongoing debate, with no resolution, and thus it is a work in progress. The perpetual debate allows the rest of us to avert our eyes and go about business as usual. This can make for an easy path of absolution of the necessary self-criticism that is required for improvement.

These are difficult challenges and do not lend themselves to the more positively branded views of our society that we are exposed to and have at times been encouraged to repeat. The ability to speak up within increasingly corporatized health care organizations has lessened, and alternative views seem less welcome than before. Our voices have been quieted.

Our centers of excellence are often located in struggling neighborhoods, and this makes for an ironic and less palatable conversation. One can argue that people do not actually care or do not actually want to know what happens in the alleys and on the streets of the cities and towns where they live, and definitely care less about what happens in the jails where people live and struggle.

Those of us who have walked the corridors of the detention centers and jails know full well these are not places of rehabilitation. They are cruel places where few will come out unscathed, and many will leave more embittered than when they entered. It does not take long before we see that what appears to be a simple division between not guilty by reason of insanity and guilty hides a multitude of more complicated factors: mental illness, access to care, and consequences of poverty, racism, or discrimination in all its manifestations that affect behavior. We

know that many people found guilty under the law got to that point, not because of some criminal mindset, but because of poorly treated mental illness or a childhood marred by abuse and deprivation, creating a life at the edge of society as we know it. As John Spenkelink, a condemned man awaiting the death penalty, wryly observed, capital punishment means “them without the capital get the punishment” (Ref. 9, p 673).

There is more for us to do as forensic psychiatrists to improve the lot of our fellow human beings than articulating the contribution of mental disorder to the offense and the law and unpacking and reciting law and case law. There is humanity in everyone.^{10–12} Although the behaviors are described through a legal lens, the struggles experienced by the people whom we assess are largely driven and drawn from systemic problems within our societies. We agree with Martinez and Candilis,¹³ and we argue that we must challenge each other to do more.

In individual cases, forensic psychiatry is a convergent process, taking all of the information and putting it into a format that makes it easier for the triers of fact to understand, and thus allows them to apply the law to the question at hand. But there is also a role for research and thinking in forensic psychiatry to make sense of the recurrent patterns we see and to identify the impact of the faltering determinants of health. There is a need to tease out some of the systemic problems that drive criminal behavior, with or without mental disorder. There is a need for our advocacy and our voices to call out systemic racism, stigmatization, and discrimination when we see it. We and our patients and those whom we assess live in systems. We are of those systems, imperfect though they are. We should hold our communities and legislators responsible for the fundamental problems that lead to ongoing criminal behavior. We need to better understand those systems and the systems set up to treat, manage, and rehabilitate forensic patients. Only then can we shift the balance in the direction of positive change. It is not just finding the right treatments for substance use disorder for our patients, but understanding what drives substance use in people. We should be looking at the life course development, including genetic and epigenetic factors, in offending behavior.¹⁴ We should not only be working with adults before the law, but also calling out the need to treat people from birth when we know who will be at risk to ultimately end up in front of us.

Perhaps there is room to reaffirm our fiduciary duty to patients and our society, to regularly step outside of the objective position and call out the drivers of criminality and violence. We have a clear view of many societal failures, including access to care, discrimination, and the treatment of incarcerated persons. So perhaps the field of forensic psychiatry can also become a transformative vehicle. We can be agents for positive change. We can advocate. We can raise our voices and demand improved care for the marginalized. We can call out discrimination, and we can demand true rehabilitation for those in forensic and criminal institutions. We can reframe the role and future of forensic psychiatry.

And if these ideas provoke some discomfort, it is the constructive discontent that will make for a better world and a stronger profession.

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