

## **President's Message: Reasoning Behind Conclusions in Psychiatric Reports and Testimony**

Some years ago Judge Bazelon published a deploration of court performance of psychiatrists.<sup>1</sup> He was rebutted in part by Quen,<sup>2</sup> an AAPL member. However, the gravamen of the initial part of his article, "Psychiatrists . . . limit their testimony to conclusory statements couched in psychiatric terminology. Thereafter they take shelter in a defensive resistance to questions about the facts that are or ought to be in their possession. . . . Psychiatrists [don't explain] the origin, development, or manifestation of a disease in terms comprehensible to the jury," was not directly controverted.

The picture of psychiatrists is unflattering and appears to me to be overdrawn. Nevertheless there may be some truth in it. It is difficult to disagree with the Bazelonian comment, "Challenging the expert and digging into the facts behind his opinion is the lifeblood of our legal system."

A few years ago, at an AAPL meeting, the writer directed a workshop, "Evaluate your forensic psychiatric reports." Various reports were submitted for consideration for evaluation by a panel, and half a dozen were chosen for distribution (with names and places disguised). The reports were critiqued and discussed by those attending the workshop.

A set of guidelines for preparation of a psychiatric report to the criminal court was prepared for the workshop and was subsequently published as part of an article on competency considerations.<sup>4</sup> The guidelines amounted to a kind of elaboration of Bazelon's concerns.

Another set of reports, unusual and fascinating, was presented in this journal by Perr.<sup>3</sup> Those reports had the distinct advantage of comprising four separate evaluations of the same case, a young man who had killed his father while engaged in a modified Russian roulette activity.

To what extent did the various reports fulfill the requirement of justifying conclusions with facts?

The question does not have an easy answer because of the ambiguity of the notion of justification. What is a suitable justification for one person may be an open-ended dogmatic assertion for another. But there are some fundamental notions.

For example, one report in the Perr group states, "Mr. S. is suffering from a hysterical neurosis, dissociated type . . . he was behaving psychologically as if he was back in Vietnam facing an enemy at the

moment . . . he did not know that he was committing a crime . . . he was not criminally responsible.” Various facts about the incident and the individual had been mentioned in the antecedent part of the report.

From the standpoint of logic, for a naive individual making a decision, the following information is necessary for justification of the conclusion to be complete:

1. What facts indicate that Mr. S. was suffering from hysterical neurosis, dissociated type? What are the criteria for the diagnosis (criteria which are of necessity fairly abstract) and what concrete observations of Mr. S. led to the conclusion that he fit the criteria? (A justification with respect to this kind of question in a criminal case is very difficult because it tends to be so dependent on history as provided by the examinee. It is virtually impossible for the examiner to ascertain the accuracy of the verbal report provided by the examinee, so that any conclusion based on such subjective reporting must have a relatively low confidence value unless buttressed by substantial amounts of ancillary information. That problem is even worse if the examinee is amnesic with respect to some important event.)

2. In what way does hysterical neurosis, dissociated type, relate to knowledge as to whether a person was committing a crime? Is every person who has a hysterical neurosis, dissociated type, similar with respect to the legal issue of knowledge as to whether the individual is committing a crime? If not, what are the special circumstances in the instant case that lead to that conclusion? How in general can one ascertain whether a person “knows” he is committing a crime?

3. One must be prepared to answer a question which may be asked, though rarely: what are the methods used to determine that a diagnosis of hysterical neurosis, dissociated type, is indeed a valid diagnostic classification? Such a question could indeed come up in the courtroom and could be quite germane to the resolution of a case.

From the standpoint of the person making assertions the overall logic in this type of situation is as follows:

1. Observations 1, b, . . . n have been performed on a given individual,
  - a. The observations themselves have a certain reliability validity, and error.
2. The criteria for diagnosis of condition alpha are A, B, . . . N.
  - a. Such diagnostic criteria have a certain reliability, validity, and error.
  - b. The methods of aggregating diagnostic criterion observations in order to form a diagnosis, for not all criteria are present in every case, also have a certain reliability, validity, and error.
  - c. In short, the diagnosis itself has a certain reliability, validity, and error.
3. There are criteria 1, 2, . . . X, for fulfillment of a legal classification.
  - a. Those criteria and their combination have a certain flexibility of interpretation as determined by cases I, II, III . . . Y.

4. The diagnosis relates to the legal criteria in a certain manner as indicated by specific legal cases. (The same legal opinions usually relate legal facts to legal criteria. Seldom do they go into the specifics of the psychiatric facts, however.)

5. Therefore, the instant observed case does, or does not, relate to the legal criteria within reasonable and appropriate (both essentially undefinable terms) limits of error of observation and of definition.

Given that logic, several issues are apparent.

1. The state of the art of observation in psychiatry is highly subject to error and is notoriously unreliable.

2. The state of the art of diagnostic classification in psychiatry, notwithstanding *DSM III*, is far from a desirable one, particularly with respect to validity, *i.e.*, correlating a diagnosis with some outside criterion, such as relevance to legal consideration.

3. Information with respect to those limits of observation and classification in psychiatry is not available without much effort, if it can be found at all. In any case it is far too much information for the practitioner to keep in his head. Thus even to know the limits of his knowledge in a given case, based on others' experience, the psychiatrist will have to undertake a time-consuming literature search.

The process is further complicated because of the following:

4. Definitions of terms and concepts for legal purposes are not always precise, nor are the relevant cases delimiting the decisions always found.

5. The psychiatric literature regarding classification and validation of classification is usually in terms of psychiatric uses rather than legal uses. Insofar as the usefulness of a classification system is intimately related to the purposes for which the classification scheme was developed, it is not likely to apply as well to other uses. Thus even a literature search in psychiatry is unlikely to provide the information required for the legal purpose.

6. The legal mind is a layman's mind generally. The mind of the jury must always be regarded as a collective layman's mind. Thus explicating one's concepts must be regarded as a step-by-step educational effort for a well-meaning but naive group of students. Since many psychiatric and legal issues are complex and subtle, that educational process is bound to be time-consuming. For jurors of below a certain capacity and level of sophistication, it may be impossible.

7. Relating psychiatric findings to legal concepts is a joint psychiatric and legal effort. Although at times the psychiatrist knows more about the relevant legal considerations than the attorney who consults him, that is the exceptional situation. Thus, additional time is required for consultation and mutual education between the attorney and the psychiatrist. Depending on the experience of both, that too can be a lengthy process of mutual education.

In the light of the comments cited above, Judge Bazelon's criteria for a complete explication were seen by the writer to have been fulfilled

only partly in the observed reports. Much of the intervening logic involving observations and conclusions was not mentioned. Perhaps they were not mentioned because the examiners were familiar with those limitations; perhaps the examiners felt that discussing them would have been superficial and unnecessary. Perhaps they were never challenged in terms of that logic when testifying. Perhaps also the weakness of the state of our art discouraged the evaluators from pursuing the matter.

The fact remains that it is possible, at least in part, to fulfill Judge Bazelon's demands of us, but it is not easy, and it is not very precise. Judge Bazelon notes that he was told by Dr. Overholser, the former Superintendent of St. Elizabeth's Hospital, that it "would require from 50 to 100 man-hours of interviewing and investigation" in order to process such cases properly.

Bazelon implies that he would be happy if the psychiatrists would state that, and let the jury know about our limitations. Well, perhaps he would have been happy, but I doubt it. The demands of justice, if the attorneys particularly, but also the psychiatrists, were aware of them, would ultimately face the demand that greater attention be paid to explicating fully the logic above in the cases in which it would be appropriate.

Where the resources would come from, first of all, to make judges and attorneys more aware of the state-of-the-art limitations in these cases in which the law and psychiatry interdigitate, and second of all, to make forensic psychiatrists more aware, seems a real problem to me. Surely other problems afflicting the state of sophistication and competence of the legal profession deserve a higher priority — or at least are felt by legal practitioners to deserve a higher priority. The same could perhaps be said of psychiatrists.

It does appear to me though, that organizations like AAPL are contributing to some extent by increasing forensic sophistication among psychiatrists. I think one thing that we could do further would be to try to obtain literature surveys of diagnostic concepts which are of common use in legal situations, such as hysterical neurosis, dissociated type, schizophrenia, traumatic neurosis, etc., with the explicit goals of summarizing the diagnostic reliability and validity literature, and of summarizing the case law, 1) that touches on the basic definitions on the concepts involved, *e.g.*, inability to know right from wrong, and 2) that discusses the conceptual validity of the psychiatric notion vis-a-vis the legal notion.

Such a project, relatively minor in scope, would be likely to be of significant aid to practitioners of many kinds in this field, including judges, attorneys, and fellow psychiatrists. I hope we do it. Any volunteers?

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## References

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2. Quen J: Letter to the Editor. *Sci Am* 231: 6-10, 1974
3. Perr IN: Psychiatric Testing and the Rashomon Phenomenon. *Bull Am Acad Psychiat and the Law* 3:83-98, 1975
4. Sidley NT: Interests Involved in Referral for Criminal Competency Evaluation. *Am J Forensic Psychiat* 1: 25-41, 1979