

# Determining the Goals Toward Which Forensic Mental Health Practice Should Aspire

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Forensic mental health professionals (FMHPs) play a crucial role in shaping legal outcomes, necessitating a clear understanding of excellence in the field. Establishing criteria for excellence depends upon first addressing key controversies, including those related to the role for advocacy inside the legal process, the extent to which FMHPs should strive for social justice outside the courtroom, and the allocation of scarce forensics resources. Resolution of these debates will, in turn, determine whether excellence stems primarily from selection or treatment. Only once a clear consensus regarding the meaning of excellence develops can aspirational goals for the professional be established.

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Forensic mental health professionals (FMHPs) wield considerable influence to shape outcomes in the legal system and to transform, for better or for worse, the lives of both criminal defendants and participants in civil litigation. Their expertise and authority also afford them an opportunity to affect policy and jurisprudence, should they choose to exercise their clout, in areas as far ranging as child custody, civil commitment, and capital punishment. Under these circumstances, ensuring that FMHPs possess both the personal attributes and the acquired abilities necessary to perform their roles at the “highest levels of professional practice” is essential (Ref. 1, p 8). In “Toward Aspirational Forensic Mental Health Practice,” Goldenson and colleagues<sup>1</sup> do a commendable job of drawing attention to the importance of striving for excellence in forensic practice and of detailing some of the specific qualities and skills toward which FMHPs ought to aspire. Yet any discussion of aspiration in the field must start with an assessment of which qualities and skills are crucial for

practitioners, which in turn requires an interrogation of the underlying purposes of forensic psychiatry and forensic psychology, hereafter referred to collectively as forensic mental health. Different callings obviously demand different skills: although both butchers and surgeons require specific talents and, arguably, distinctive temperaments, these qualities are obviously not interchangeable. Similarly, one cannot ask which skills constitute excellence in forensic mental health unless one first establishes a clear vision of the field’s theoretical aims and concrete objectives. As the late baseball manager Yogi Berra saliently observed, “If you don’t know where you’re going, you’ll end up someplace else.”<sup>2</sup>

Goldenson and colleagues<sup>1</sup> establish their criteria for excellence within the context of the American Psychological Association’s “Specialty Guidelines for Forensic Psychology” (SGFP) and the American Academy of Psychiatry and Law’s (AAPL) “Practice Guideline for the Forensic Assessment” (PGFA). Although these are both valuable documents that reflect the consensus of thought leaders in these respective fields, they are by design somewhat limited in scope. The PGFA specifically concerns itself with “the performance of forensic evaluations” (Ref. 3, p S3). Although the SGFP is somewhat broader in its compass, addressing a range of legal

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and ethics matters, the document identifies the principal responsibilities of the forensic psychologist as “integrity,” “impartiality,” “fairness,” and “avoiding conflicts of interest” (Ref. 4, pp 8-9). Neither document concerns itself significantly with structural concerns in forensic practice and especially those that shape the field outside the courtroom, such as, *inter alia*, the role of social capital as a barrier to entry into the field or how forensic services, as a limited resource, are allocated. Nor do these documents emphasize such factors as equity, social justice, and advocacy. For the stated purposes of the SGFP and PFGA, these limitations are both understandable and reasonable. In establishing criteria for excellence among FMHPs, a far broader range of factors should be considered.

Goldenson and colleagues, to their credit, do acknowledge that “[l]ittle has been written about ideal attitudes or qualities that would facilitate a FMHP’s efforts to manage the complex demands associated with forensic practice” (Ref. 1, p 4). This absence of scholarship, and particularly empirical data, renders the challenge of achieving a consensus of standards for excellence all the more difficult. In that regard, their article is noteworthy and laudable for broaching a topic that too few forensics professionals are willing to discuss. They also recognize several of the ongoing disagreements about the purposes of forensic assessments. For instance, they note that “[t]he literature on interpersonal aspects of forensic practice” reflects an “ongoing debate on the role of compassion and empathy in forensic contexts” (Ref. 1, p 4). They also implicitly recognize the conflict over the nature of objectivity in citing Griffith and colleagues’ advocacy for contextualizing the incident that leads the criminal defendant to court and taking into account the relevant political, cultural, and historical realities. They appear to believe that standards of excellence can be established independent of the resolutions of these ongoing debates. To a degree, of course, that claim is difficult to contest. Clinical knowledge, for instance, is a goal to which partisans on various sides of the major forensics debates would likely agree that all FMHPs should aspire. Yet many other aspects of so-called excellence, as discussed below, will depend upon one’s particular stances on the ethics debates that still divide forensic practice.

Striving for excellence, however defined, among FMHPs also requires clarity on whether the attributes and skills needed to achieve optimal practice are

chiefly the product of training and the professional environment (i.e., treatment effects) or inherent characteristics of practitioners that cannot be ameliorated substantially by training, but only through recruiting future FMHPs already endowed with the desired traits (i.e., selection effects). If the latter, then the primary focus of those wishing to improve forensic practice should be gatekeeping. Goldenson *et al.*<sup>1</sup> incorporate aspects of excellence that appear to result from selection (e.g., humility, self-awareness, tolerance of ambiguity, etc.) and also those that appear to result from treatment (e.g., writing skills) but do not establish whether the selection or treatment effects are more significant. What must be highlighted is that whether selection or treatment matters most may depend upon how one views the larger goals of forensics practice. As discussed below, approaches that stress empathy, compassion, and advocacy for social justice, for instance, may consider recruitment to be more important than those which reject the value of these objectives. In turn, approaches that do not prioritize these values may place a greater emphasis upon training over selection. Teaching aspiring FMHPs to author reports or to testify is likely easier than teaching them to be compassionate or feel empathy.

I first consider how the definitions of excellence in forensic mental health depend heavily upon one’s conception of the broader purposes of the profession. Then, I discuss how perspectives on this problem may shape matters related to selection, treatment, or both.

### The Purposes of Forensic Mental Health

Mental health professionals have been engaged deeply with the legal system since the 19th century, when the field of forensic psychiatry “emerged as a professional activity” (Ref. 5, p 273).<sup>6</sup> Serious deliberation over the purposes of the field awaited its more formal professionalization in the mid-20th century. Three of the most important of these debates relate to objectivity within the judicial system, advocacy outside the courtroom, and the allocation of resources. The goal of this commentary is not to resolve, or even weigh in upon, these debates. Rather, the purpose here is to elucidate how clarity on these problems is a necessary prerequisite for establishing aspirational goals for FMHPs.

Martinez<sup>7</sup> traces current debates over the FMHP’s role within the judicial process to the historic

disagreement between Bernard Diamond and Seymour Pollack regarding the relationship between FMHPs and the legal system. According to Martinez, Diamond “recognized that the forensic expert could not obtain some form of objective truth” and “was one of the first forensic psychiatry writers who understood the myth of the objective expert” (Ref. 7, p 430). In contrast, Pollack believed that “neutrality, detachment, and objectivity are possible” (Ref. 7, p 431). Pollack’s vision saw fruition in Appelbaum’s seminal essay, “A Theory of Ethics for Forensic Psychiatry,” in which Appelbaum argued that “truth-telling is the first principle on which the ethics of forensic psychiatry rest” (Ref. 8, p 240). Although Appelbaum recognized the inherent subjectivity of all testimony, he argued that the FMHP has the obligation to strive for objectivity and to take steps, such as acknowledging biases and limitations, to mitigate the influence of these subjective elements.<sup>9</sup> Identifying a direct heir to Diamond’s vision proves somewhat more challenging. Although the temptation is to draw a linear connection between Diamond’s writings and those of Griffith, the differences between Appelbaum and Griffith should not be overstated: Griffith himself noted that he did not “disagree so much with” Appelbaum’s “reference points of truth telling and respect for persons,” but rather that he believed Appelbaum “assumed too readily. . . the general application of his principles” without considerations of culture and experience (Ref. 10, p. 180).<sup>11</sup> The direct legacy of Diamond is more readily seen in the recent scholarship on the inherent unconscious biases in forensic testimony.<sup>12</sup>

The second ongoing controversy relates to the role of FMHPs outside the judicial process. Like the debate over the role of FMHPs inside the courtroom, this debate stems from the mid-20th century. The central question regarding the work of FMHPs beyond report writing and testimony is whether, and to what degree, FMHPs ought to engage in debates of law and policy. Bloom has suggested that, although AAPL’s ethics guidelines mention the relationship of forensic psychiatry to regulatory and legislative matters, “these areas have not been sufficiently emphasized as key components of the specialty” (Ref. 13, p 418).<sup>14</sup> Starting in the 1970s, in an era of political activism and social turmoil, some FMHPs began to argue that the duty of the FMHP was not merely to obtain knowledge of these matters but to influence them. For instance, Rollins contended that “failure

to engage with the law-enforcement, judicial, and correctional systems may result in isolation for defendants” and that a “psychiatrist must become involved in the legal process as an advocate and facilitator if he is to serve the best interests of both society and the defendant” (Ref. 15, p 632). Even Appelbaum saw a role for “advancing the pursuit of justice. . . in professional activities in which there was no conflict with forensic psychiatric functions,” which Griffith (but not Appelbaum himself) identifies as “support for a model of mixed duties” (Ref. 10, p. 179). Since that time, increased awareness of structural factors in forensic outcomes and the legal system more generally has led a number of the leading ethicists in forensics to embrace variations of this view. All of these scholars adhere to the general principle that “being partisan. . . in promoting the welfare of patients is not inconsistent with being neutral as individual practitioners in the adversarial context of the court” (although not all believe that neutrality in the latter context is required) (Ref. 16, p 194). Most notably, Candilis and Martinez have argued for “advocating for destigmatization, decriminalization, and nonadversarial approaches in criminal and civil activities” to address “outmoded, role-bound thinking” in order to achieve “overarching social goods” (Ref. 17, p 576). Piel has emphasized the importance of incorporating such advocacy into forensic training.<sup>18</sup> Yet Bergkamp and colleagues note that “how or whether forensic professionals can advocate for social justice and retain a neutral stance in our contemporary societal context” still remains an “unresolved question” (Ref. 19, p 245). FMHPs, for instance, may fear that advocacy outside the courtroom will impair the perception of their impartiality as expert witnesses.<sup>20</sup> Needless to say, middle ground does exist on this matter, and it may be appropriate to engage in some forms of advocacy outside the courtroom, but not others.

The third contentious problem relevant to standards of excellence for FMHPs is that of how forensic resources, including human resources, are to be deployed. Because FMHPs are inherently a limited resource and their numbers are largely regulated by the profession itself, arguments have been advanced that FMHPs have a duty to provide services equitably.<sup>21</sup> Most debates regarding ethics in forensic practice focus either on the role of FMHPs within

the judicial system or the degree to which they ought to engage in the political process. Yet, as I have written previously, “choosing how to allocate one’s time and energy among cases in ordinary practice is among the most important decisions that a practitioner makes vis-à-vis forensic ethics” (Ref. 21, p 57). The importance of these choices cannot be understated in light of data showing that the very presence of expert testimony can drastically affect the outcome of cases.<sup>22</sup>

How one resolves each of the three problems above will inform one’s definition of excellence among FMHPs. One vision of excellence may entail FMHPs who feel empathy for their clients, account for sociological and structural factors in their reports and expert testimony, engage directly with the legislature to improve the justice system, and devote a substantial portion of their time to *pro bono* work for underserved defendants and litigants. Another vision of excellence may entail FMHPs who strive for non-judgmental regard toward their clients, resist the influence of sociological and structural forces in preparing reports and testimony, and avoid engagement with social justice advocacy or the political process. This commentary does not seek to advance one position or the other but rather to note that these visions of excellence appear, at least to some degree, mutually incompatible. In theory, a pluralistic theory that embraces multiple visions of excellence might be possible, but Goldenson and colleagues<sup>1</sup> do not advance such an approach, nor does such an approach appear to be documented in the extant literature.

### Selection versus Treatment

Although Goldenson *et al.*<sup>1</sup> catalog many of the elements they believe to be essential for top-quality forensic practice, they do not clarify how the profession can ensure that these features are present in FMHPs and their work. In practice, doing so requires, at least to some extent, grappling with the matter of whether FMHPs are, so to speak, born or made. Considerable data exist regarding the role of selection versus treatment in college choice and long-term outcomes.<sup>23</sup> Unfortunately, no such empirical data are yet available for FMHPs. Yet clarity on this matter is essential if one is to make meaningful strides toward excellence. Of course, the tension between selection and treatment is not binary; presumably, both factors play some role in the quality (however defined) of FMHPs. Acknowledging that

both forces play a role does not conflict with the likelihood that one of these forces is more influential. Moreover, some elements of excellence may be determined predominantly by selection and others by treatment. How one sees the goals of forensic practice is likely to shape one’s views on this problem; in fact, depending upon one’s conception of the objectives of the field, the importance of one factor over the other may differ. For instance, if one believes that excellence incorporates meaningful appreciation of structural biases, such as racism and sexism, in one’s forensic practice, then one may place emphasis on recruiting future FMHPs who have either personal experiences in these domains or already have a track record of engagement in related advocacy efforts. In light of unconscious biases and personal values, training fellows who lack such backgrounds to incorporate these elements may prove less fruitful. A profession that cares deeply about structural bias may wish to recruit fellows accordingly. In contrast, if one believes that FMHPs should strive to avoid allowing empathy for defendants and concerns for structural forces to influence their reports and testimony, one might either emphasize the importance of training or even avoid recruiting fellows with histories of meaningful engagement on social concerns. A blueprint for achieving excellence, in other words, requires a consensus regarding the meaning of excellence.

### Conclusions

Excellence is not objective. Western thinkers from Aristotle to Rawls to Will Durant have recognized that any definition of excellence reflects the underlying values and preferences of the subject.<sup>24</sup> That does not mean that an organization or society cannot reach a consensus on a definition of excellence and then urge its members to strive for that standard. The challenge with advocating for such aspirations among FMHPs, as Goldenson and colleagues<sup>1</sup> do, is that forensic practice has not yet agreed upon a consensus standard. Thought leaders and program directors with divergent understandings of the objectives of their fields, and hence differing definitions of excellence, may find themselves working at cross-purposes. In urging FMHPs to strive for excellence, direction is more important than distance. At present and for the foreseeable future, the optimal direction for forensic practice remains highly unsettled and defies easy resolution.

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