MENTAL HEALTH SERVICES TO CORRECTIONAL FACILITIES REPORT

PREFACE

The Joint Committee of the Psychiatry and General Sections on Mental Health Services to Correctional Facilities is cochaired by Dr. Richard Rosner (Psychiatry) and Dr. Thomas Johnson (General). The Committee was created at the February 1984 meeting of the Academy of Forensic Sciences (AAFS) and undertook the tasks of (1) providing a structure within which members of both sections concerned with correctional mental health programs could be identified, (2) fostering the exchange of ideas and information among the members so identified, (3) presenting a panel at the February 1985 meeting of AAFS to bring this shared concern to the attention of the membership of AAFS, and (4) publishing selected invited papers to stimulate constructive consideration of the field of correctional psychiatry.

The papers assembled cover a wide range of issues. Dr. Rosner suggests the general principle that cooperation is easiest where the ends of medicine and law coincide and most difficult where those ends diverge. Dr. Johnson considers the potential problems for private contracting of mental health services to correctional facilities. Ms. Harmon reviews the efforts of the agencies in the City of New York to cooperate in planning for correctional mental health services and, as an appendix, presents the recently developed standards for mental health services to correction agencies in New York City. Drs. Maier and Miller present a perspective on the operation of mental health service to a correction facility.

The aim of the Committee will be served if these essays raise good questions, rather than if they provide firm answers.

Richard Rosner,[1] *M.D.*

The Relationship of Court Clinics to Correctional Mental Health Services: Opportunities for Cooperation and Potential Sources of Conflict

REFERENCE: Rosner, R., **"The Relationship of Court Clinics to Correctional Mental Health Services: Opportunities for Cooperation and Potential Sources of Conflict,"** *Journal of Forensic Sciences,* JFSCA, Vol. 32, No. 1, Jan. 1987, pp. 217-220.

Presented at the 37th Annual Meeting of the Academy of Forensic Sciences, Las Vegas, NV, 12-16 Feb. 1985.

[1]Medical director, Forensic Psychiatry Clinic for the New York Criminal and Supreme Courts (First Judicial Department) and clinical associate professor, Department of Psychiatry, School of Medicine, New York University, New York, NY.

ABSTRACT: When the ends of law and the ends of medicine coincide, cooperation between clinical and forensic psychiatry is likely. When the ends of law and the ends of medicine diverge, cooperation may not be feasible. This is demonstrated by the relationship between the Forensic Psychiatry Clinic for the New York Criminal and Supreme Courts (First Department) and the Prison Mental Health Service of the City of New York. It is suggested that the experience of these two agencies is generalizable to all who attempt to provide mental health services to defendant populations.

KEYWORDS: psychiatry, jurisprudence, prisons, doctor-patient privilege

This paper will attempt to generalize from the experiences of the Forensic Psychiatry Clinic for the New York Criminal and Supreme Courts (First Judicial Department) to address issues raised when two separate facets of the criminal justice mental health system interact. It will be suggested that the nature of forensic psychiatry and the nature of therapeutic psychiatry are more sharply demonstrated in this interaction than might be expected and that the study of the opportunities and obstacles in the path of cooperation will shed light on the differences between the two aspects of psychiatric practice.

Forensic psychiatry is understood as the application of psychiatric expertise for legal ends. Therapeutic psychiatry is understood as the application of psychiatric expertise for medical ends. In practice, the same individual physician often functions in both roles, sometimes sequentially and sometimes simultaneously. As the ends of law and the ends of medicine can be quite different (and frequently are), the psychiatrist who is both a clinician and a forensic specialist may find that he cannot properly do his clinical tasks without violating his forensic obligations and vice versa.

In New York City, the Forensic Psychiatry Clinic functions to provide the Criminal Court and the Supreme Court with evaluations regarding the competence of defendants to stand trial. In that role, the medical staff of the Clinic has no doctor-patient relationship with the defendants and, consequently, there is no confidentiality or any of the other appurtenances of a medically focused relationship, for example, the forensic psychiatrists have no direct obligation to ensure the well-being and interests of the defendants they examine. The forensic psychiatrists of the Clinic have a responsibility to the judges who have referred the defendants for examination, not to the defendants they examine.

The Prison Mental Health Service of the Department of Health of the City of New York has therapeutic responsibility for the provision of psychiatric care to defendants who are incarcerated at the main facility of the Department of Correction of the City of New York. The clinical staff of the Prison Mental Health Service have a therapeutic goal, have the usual doctor-patient relationship with the defendants detained by the Department of Correction, and are thereby required to foster the well-being and interests of the defendants who are their patients. The doctors of the Prison Mental Health Service have a responsibility to the defendants, not to the judges who have ordered the detention of the defendants.

However, the roles are not as neatly separated as has been suggested. In fact, the staff of the Forensic Psychiatry Clinic is made up of human beings who have not abandoned their commitment to foster the health and well-being of persons in need of medical attention. It may be tangential to their forensic obligations, but the doctors cannot ignore the possibility that a defendant is seriously ill. Similarly, the staff of the Prison Mental Health Service operates because the government has a responsibility to provide for the well-being of its citizens when, by incarceration, it prevents citizens from being able to provide for their own well-being. Thus, the seemingly clear clinical role is really a forensic role, the therapeutic ends are created by law, and the legal end is a medical end in this particular instance.

Because the Forensic Psychiatry Clinic has a tangential therapeutic interest in the defendants who pass through it, there is an overlap between its role and the role of the Prison Mental Health Service. In the course of the some 2000 psychiatric examinations of defen-

dants performed yearly at the Clinic, considerable data are obtained that have therapeutic importance. In some instances, the doctors of the Forensic Psychiatry Clinic may see defendants who are not recognized as in need of therapeutic services, whose clinical condition has substantially deteriorated since initially being seen by Prison Mental Health Services, who have developed physical illnesses, or who are not otherwise recognized as being a danger to themselves or to others. As forensic psychiatrists, charged with assessing defendants' competence to stand trial, such need for therapeutic services may not be germane to the formal work of the staff of the Forensic Psychiatry Clinic. However, as doctors who happen to be working in a forensic capacity, the Clinic staff has a moral concern (albeit not necessarily a legal duty) to respond to a perceived need to help therapeutically the defendants. The Clinic itself has no authorization to treat the defendants; it is the Prison Mental Health Service that is authorized to treat them. The moral concern of the Clinic staff is an impetus to cooperate with the Prison Mental Health Service in its therapeutic efforts.

Specifically, a mechanism has been developed so that notice is given to the Prison Mental Health Service (and to the Department of Correction) whenever the Forensic Psychiatry Clinic staff believes a defendant is in need of psychiatric care, is in need of medical care, or constitutes a likely threat to himself or to others. The tension between the forensic obligation and the therapeutic moral concern is resolved by attempting to insure that therapy is provided by the Prison Mental Health Services, while continuing to focus on the formal legal question as to whether or not the defendant is competent to stand trial. It is a commonplace to note that severely ill defendants may nonetheless be competent to stand trial, so the defendant's illness may prompt two inconsistent responses from the Clinic staff. On the one hand, the staff may ignore the interests of the defendant by indicating that he should be tried for his alleged offense (rather than being shunted into the mental health system and having the charges against him dismissed, as happens to defendants who are found incompetent to stand trial and who have been charged with minor offenses). On the other hand, the staff will respond to its moral concern by attending to the interests of the defendant by referring him for treatment by the Prison Mental Health Service. The same doctor functions both forensically and therapeutically by compartmentalizing his two roles; one role may be predominant, but the other role is in abeyance rather than absent.

While the previous instance demonstrates how the interaction between the forensic and clinical aspects of psychiatric work can lead to cooperation, such is not always the case. A major disagreement may develop over the issue of confidentiality. The Prison Mental Health Service staff has a doctor-patient relationship with the defendants held in detention, whereas the Forensic Psychiatry Clinic staff does not. Thus, the information that defendants share with the Prison Mental Health Service staff is to be treated confidentially, while the information that defendants share with the Forensic Psychiatry Clinic staff is shared with the judges, the defense counsel, and the prosecutor, and may eventually become part of a public record available to all.

The question of whether or not a given defendant is malingering is one of considerable concern to the Forensic Psychiatry Clinic. Germane to the question is whether or not the defendant's behavior in the presence of the examining forensic psychiatrist is the same as the behavior that he exhibits generally, for example, with his treating therapist in the Prison Mental Health Service. Thus, it would be helpful to the Forensic Psychiatry Clinic staff to have access to the data obtained by the Prison Mental Health Service staff.

The Prison Mental Health Service maintains that it cannot have a therapeutically effective alliance with the defendants if it cannot guarantee the confidentiality of its records. Why would a defendant be honest with his therapist if he believed that the data he conveyed would be shared with other parties who do not have the defendant's own interests as their fiduciary concern? If a defendant believed that his efforts at feigning illness to the forensic psychiatrist could be undermined by corrective data from this therapist, would not there be a motivation to feign illness to the therapist as well? Further, the physical safety of the staff of the Prison

Mental Health Service might be compromised if word were spread that the staff revealed confidences. These practical issues lend added weight to the traditional ethical commitment to keep the confidences of one's patients. Thus, the Prison Mental Health Service prefers to have a semipermeable boundary between itself and the Forensic Psychiatry Clinic, that is, it can receive information from the forensic psychiatrists, but its therapists may not transmit any information to the forensic psychiatrists.

The matter has never been adequately resolved. The Forensic Psychiatry Clinic has availed itself of the subpoena power of the Court to have the records of the Prison Mental Health Service be made available in selected cases. The Prison Mental Health Service has pled that administrative difficulties made it impossible to comply in a timely fashion to the subpoena, so that the requested data arrives long after the case has been adjudicated, that is, at a time when it is no longer germane. As the records of the Prison Mental Health Service are not rapidly available, the Forensic Psychiatry Clinic has essentially ceased to seek them. The matter has stalled into a stalemate situation.

Our experience suggests that clinical psychiatrists in the correctional mental health system are willing to cooperate in some areas with forensic psychiatrists in the criminal justice system, but that the areas of cooperation will be limited by the clinicians' commitments to their patients and by the forensic psychiatrists' commitment to the law. In those instances in which the interests of the medical and legal professions coincide, or in which the residual clinical concerns of the forensic psychiatrists for the well-being of persons can be legitimately given scope, then cooperation will be possible. In those instances in which medical and legal ends diverge, cooperation will not be possible and various administrative and legal conflicts may occur. We believe our experience is generalizable to other interactions between therapeutic and forensic psychiatrists who work with populations of defendants. We suggest that an early effort to delineate zones of cooperation would be beneficial to all.

Bibliography

Appelbaum, P. S., "Confidentiality in Psychiatric Treatment," in *Psychiatry 1982 Annual Review*, L. Grinspoon, American Psychiatric Press, Washington, DC, 1982.

Kruzich, J. M., "Services for Mentally Ill Offenders," in *Handbook on Mental Health Administration*, M. Austin and W. Hershey, Jossey-Bass Inc., San Francisco, 1982.

Pollack, S., "Psychiatry and the Administration of Justice," in *Modern Legal Medicine, Psychiatry and Forensic Science*, W. Curran, A. L. McGarry, and C. Petty, F. A. Davis Co., Philadelphia, 1980.

Monahan, J., *Who is the Client?*, American Psychological Association, Washington, DC, 1980.

Rosner, R., *Critical Issues in American Psychiatry and the Law, Volume One*, Charles C Thomas Co., Springfield, IL, 1982.

Rosner, R., *Critical Issues in American Psychiatry and the Law, Volume Two*, Plenum Publishing Corp., New York, 1985.

Roth, L., "Correctional Psychiatry," in *Modern Legal Medicine, Psychiatry and Forensic Science*, W. Curran, A. L. McGarry, and C. Petty, F. A. Davis Co., Philadelphia, 1980.

Slovenko, R., *Psychiatry and Law*, Little Brown & Co., Boston, 1973.

Address requests for reprints or additional information to
Richard Rosner, M.D.
Forensic Psychiatry Clinic
100 Centre St., Rm. 124
New York, NY 10013