Society and the Mental Health Profession

Chapter 19

- Psychological dysfunctioning of an individual does not occur in isolation
  - It is influenced – sometimes caused – by societal and social factors
  - It affects the lives of relatives, friends, and acquaintances
- Clinical scientists and practitioners do not conduct their work in isolation
  - They are affecting and being affected by other institutions of society

Society and the Mental Health Profession

- Two social institutions have a particularly strong impact on the mental health profession – the legislative and judicial systems – collectively called “the legal field”
  - This relationship has two distinct aspects:
    - Mental health professionals often play a role in the criminal justice system (“psychology in law”)
    - The legislative and judicial systems act upon the clinical field, regulating certain aspects of mental health care (“law in psychology”)
  - The intersection between the mental health field and the legal and judicial systems are collectively referred to as “forensic psychology”
Psychology in Law: How Do Clinicians Influence the Criminal Justice System?

• To arrive at just and appropriate punishments, the courts need to know whether defendants are responsible for committing crimes and capable of defending themselves in court
  • For example, people who suffer from “severe mental instability” may not be responsible for their actions or be able to defend themselves in court
  • These determinations are guided by the opinions of mental health professionals

Psychology in Law: How Do Clinicians Influence the Criminal Justice System?

• When people accused of crimes are judged to be mentally unstable, they are usually sent to a mental institution for treatment
  • This process is called criminal commitment
  • Several forms:
    • Mentally unstable at the time of the crime = if found not guilty by reason of insanity (NGRI), committed until improved enough to be released
    • Mentally unstable at the time of trial = committed until competent to stand trial

Psychology in Law: How Do Clinicians Influence the Criminal Justice System?

• These judgments of mental instability have stirred many arguments
  – Some consider the judgments “loopholes”
  – Others argue that a legal system cannot be just unless it allows for extenuating circumstances, such as mental instability
• The practice of criminal commitment differs from country to country
Criminal Commitment and Insanity During Commission of a Crime

- “Insanity” is a legal term
  - The defendant may have a mental disorder but not qualify for a legal definition of insanity
  - The original definition can be traced to the 1843 murder case of Daniel M’Naghten in England:
    - The M’Naghten test stated that experiencing a mental disorder at the time of a crime did not by itself mean that the person was insane; the defendant also had to be unable to know right from wrong

- In the late 19th century, some U.S. courts adopted a different standard of insanity:
  - The irresistible impulse test
    - This test emphasized the inability to control one’s actions (“fit of passion” defense)
  - A third test also briefly became popular:
    - The Durham test
      - People were not criminally responsible if their “unlawful act was the product of mental disease or defect”

- In 1955, the American Law Institute developed a test that combined aspects of the M’Naghten, irresistible impulse, and Durham tests
  - The American Law Institute test held that people are not criminally responsible if at the time of the crime they had a mental disorder or defect that prevented them from knowing right or wrong OR from being able to control themselves and to follow the law
  - The test was adopted, but was criticized for being too “liberal”
Criminal Commitment and Insanity During Commission of a Crime

- In 1983, the American Psychiatric Association recommended a return to M’Naghten test.
  - This test now is used in all cases tried in federal courts and in about half of state courts.
  - The more liberal ALI standard is still used in the remaining state courts, save 4, which have essentially eliminated insanity pleas altogether.

- Under this standard, about two-thirds of defendants acquitted by reason of insanity qualify for a diagnosis of schizophrenia:
  - The vast majority have a history of past hospitalization, arrest, or both.
  - About 50% are Caucasian.
  - About 86% are male.
  - About 65% of cases involve violent crime of some sort.
    - Close to 15% of those acquitted are accused specifically of murder.

What Concerns Are Raised by the Insanity Defense?

- Despite changes in the insanity standard, criticism of the defense continues.
  - One concern is the fundamental difference between the law and the science of human behavior:
    - The law assumes that individuals have free will and are generally responsible for their actions.
    - In contrast, several models of human behavior assume that physical or psychological forces act to determine the individual’s behavior.
  - A second criticism points to the uncertainty of scientific knowledge about abnormal behavior.
  - The largest criticism is that the defense allows dangerous criminals to escape punishment.
    - In reality, the number of such cases is small (less than 1 in 400).
What Concerns Are Raised by the Insanity Defense?

• During most of U.S. history, a successful insanity plea amounted to a long-term prison sentence
  – Today, offenders are being released earlier and earlier as the result of the increasing effectiveness of drug therapy and other treatments in institutions, the growing reaction against extended institutionalization, and a greater emphasis on patients’ rights

What Other Verdicts Are Available?

• Over the past few decades, another verdict has been added – guilty but mentally ill
  • Defendants receiving this verdict are found mentally ill at the time of their crime, but their illness was not fully related to or responsible for the crime
• Some states allow for another defense – guilty with diminished capacity
  • A defendant’s mental dysfunction is viewed as an extenuating circumstance that should be considered

What Are Sex Offender Statutes?

• Since 1937, when Michigan passed the first “sex psychopath” law, many states have placed sex offenders in a special category:
  • Mentally disordered sex offenders
    • People categorized this way are found guilty of a crime and judged to be responsible but are committed to a mental health facility instead of prison
    • Over the past two decades, most states have changed or abolished these laws
      • States are now less concerned about the rights and needs of sex offenders, given the growing number of sex crimes taking place; some have passed sexually violent predator laws which require prison and involuntary treatment
Criminal Commitment and Incompetence to Stand Trial

• Regardless of their state of mind at the time of a crime, defendants may be judged to be mentally incompetent to stand trial
  • This requirement is meant to ensure that defendants understand the charges they are facing and can work with their lawyers to present an adequate defense
  • This standard of competence was specified by the U.S. Supreme Court in 1960

Criminal Commitment and Incompetence to Stand Trial

• If the court decides that the defendant is incompetent, the person is assigned to a mental health facility until competent to stand trial
  – Many more cases of criminal commitment result from decisions of mental incompetence than from verdicts of NGRI

Criminal Commitment and Incompetence to Stand Trial

• The majority of criminals currently institutionalized for psychological treatment are convicted inmates whose psychological problems have led prison officials to decide they need treatment
  • Until the early 1970s, most states required that mentally incompetent defendants be committed to maximum-security institutions
  • Under current law, they have greater flexibility and some defendants are treated on an outpatient basis
Law in Psychology: How Do the Legislative and Judicial Systems Influence Mental Health Care?

- Just as clinical science and practice have influenced the legal system, so has the legal system influenced clinical practice
  - Courts have developed the process of civil commitment, which allows certain people to be forced into mental health treatment
  - The legal system, on behalf of the state, has taken on responsibility for protecting patients’ rights during treatment
    - This protection extends to patients who have been involuntarily committed, as well as to those who have sought treatment voluntarily

Civil Commitment

- Every year in the US, large numbers of people with mental disorders are involuntarily committed to treatment
  - Typically they are committed to mental institutions but most states also have some form of outpatient civil commitment
  - These laws have long caused controversy and debate

Civil Commitment

- Generally our legal system permits involuntary commitment of individuals who are considered to be in need of treatment and dangerous to themselves or others
  - May include suicidal or reckless patients
  - May include patients who put others at risk intentionally or unintentionally
- The state’s authority rests on its duties to protect the interests of the individual and of society
  - Principle of parens patriae ("parent of the country")
  - Principle of police power
What Are the Procedures for Civil Commitment?

• Civil commitment laws vary from state to state
  – Family members often begin the proceedings
  – Few guidelines have been offered by the Supreme Court
    • 1979: minimum standard of proof required:
      – Must be “clear and convincing” proof of illness and of meeting
        the state’s criteria for commitment

Emergency Commitment

• Many states give clinicians the right to certify certain patients as needing temporary
  commitment and medication
  – Requires the agreement of two physicians and/or mental health professionals
    • By tradition, these certifications often are referred to as ”2PCs” (two-physician certificates)
  – The length of stay is often limited to three days

Who Is Dangerous?

• Historically, people with mental illnesses were less likely than others to commit violent or dangerous acts because of mass hospitalizations
  • Since deinstitutionalization, however, this is no longer true
    • Although approximately 90% of people with mental disorders are in no way violent or dangerous, studies now suggest at least a small relationship between severe mental disorders and violent behavior
Who Is Dangerous?

• A judgment of “dangerousness” is often required for involuntary civil commitment
  – Research suggests that, while mental health professionals are very often wrong in making long-term predictions of violence, short-term predictions – predictions of imminent violence – can be accurate

What Are the Problems with Civil Commitment?

• Civil commitment has been criticized on several grounds:
  • It is difficult to assess dangerousness
  • The legal definitions of “mental illness” and “dangerousness” are vague
  • Civil commitment has questionable therapeutic value
• On the basis of these and other arguments, some clinicians argue that involuntary commitment should be abolished
  • Others advocate finding a more systematic way to evaluate dangerousness

Trends in Civil Commitment

• The flexibility of involuntary commitment laws peaked in 1962
  • The Supreme Court ruled that imprisoning people who suffered from drug addictions might violate the Constitution’s ban on cruel and unusual punishment
  • As the public became aware of these issues, states passed stricter standards for commitment
• Today, fewer people are institutionalized through civil commitment proceedings than in the past
Protecting Patients’ Rights

• Over the past two decades, court decisions and state and federal laws have greatly expanded the rights of patients with mental disorders, in particular the right to treatment and the right to refuse treatment.

How Is the Right to Treatment Protected?

• When people are committed to mental institutions and do not receive treatment, the institutions become prisons for the unconvicted.
  • In the late 1960’s and 1970’s, large mental institutions were just that.
  • Some patients and their attorneys began to demand that the state honor their right to treatment...

• Several court rulings addressed this issue:
  • 1972 – A federal court ruled that the state was constitutionally obligated to provide “adequate treatment” to all people who had been committed involuntarily.
  • 1975 – The Supreme Court ruled that institutions must review case files periodically and that the state cannot continue to institutionalize against their will people who are not dangerous and who can survive on their own or with willing help from responsible family members or friends.
How Is the Right to Treatment Protected?

- Several court rulings addressed this issue:
  - 1982 – The Supreme Court ruled that people committed involuntarily have a right to “reasonable nonrestrictive confinement conditions” and “reasonable care and safety”
  - In 1986, Congress passed the Protection and Advocacy for Mentally Ill Individuals Act
    - This act set up protection and advocacy systems in all states and U.S. territories
  - A number of advocates are now suing federal and state agencies, demanding that they fulfill the promises of the community mental health movement

How Is the Right to Refuse Treatment Protected?

- During the past two decades, the courts have also decided that patients, particularly those in institutions, have the right to refuse treatment
  - Most rulings center on biological treatments, including psychosurgery
  - In addition, some states have acknowledged a patient’s right to refuse ECT and/or psychotropic medications
    - As the possible harmful effects of these treatments have become known, some states have granted patients permission to refuse them

What Other Rights Do Patients Have?

- Court decisions have protected other patient rights:
  - Patients who perform work in mental institutions are now guaranteed at least a minimum wage
  - Patients released from state mental hospitals have a right to aftercare and appropriate community residence
  - People with mental disorders have a right to receive treatment in the least restrictive facility available
The “Rights” Debate

- While people with psychological disorders have civil rights that must be protected at all times, many clinicians express concern that patients’ rights rulings may unintentionally deprive these patients of opportunities for recovery
  - Despite legitimate concerns, it is important to remember that the clinical field has not always been effective in protecting patients’ rights
  - Since clinicians themselves often disagree, it seems appropriate for patients, their advocates, and outside evaluators to play key roles in decision making

In What Other Ways Do the Clinical and Legal Fields Interact?

- Mental health and legal professionals may also influence each other’s work in other ways
- During the past 25 years, their paths have crossed in four key areas:
  - Malpractice suits
  - Professional boundaries
  - Jury selection
  - Psychological research of legal topics

Law in Psychology: Malpractice Suits

- The number of malpractice suits against therapists has risen sharply in recent years
  - These claims have addressed a number of different issues, including patient suicide, sexual activity with a patient, failure to obtain informed consent, negligent drug therapy, omission of drug therapy, improper termination of treatment, and wrongful commitment
  - A malpractice suit, or fear of one, can have major effects on clinical decisions and practice, for better or for worse
Law in Psychology: Professional Boundaries

- During the past several years the legislative and judicial systems have helped change the boundaries that separate one clinical profession from another.
- These bodies have given more authority to psychologists and have blurred the lines between psychiatry and psychology.
  - 1991 – The Department of Defense set up a training program for Army psychologists to gain prescription-writing privileges (previously the domain of psychiatrists only).
  - The success of the program prompted the APA to recommend that all psychologists be granted permission to take such training courses; two states now grant such privileges.

Psychology in Law: Jury Selection

- During the past 30 years, more and more lawyers have turned to clinicians for advice in conducting trials.
  - A new breed of clinical specialist – “jury specialists” – has evolved.
    - They advise lawyers about which jury candidates are likely to favor their side and which strategies are likely to win jurors’ support during trials.

Psychology in Law: Psychological Research of Legal Topics

- Psychologists have sometimes conducted studies and developed expertise on topics of great importance to the criminal justice system.
  - Two areas have gained particular attention:
    - Eyewitness testimony
    - Patterns of criminality
Psychology in Law: Psychological Research of Legal Topics

- Eyewitness testimony
  - In criminal cases testimony by eyewitnesses is extremely influential
  - Research indicates that eyewitness testimony can be highly unreliable
    - The events are usually unexpected and fleeting
    - Laboratory subjects can be fooled into misremembering information
  - Research has also found that accuracy in identifying perpetrators is influenced by the method used in identification

Psychology in Law: Psychological Research of Legal Topics

- Patterns of criminality
  - The study of criminal behavior patterns and the practice of “profiling” has increased in recent years and has been the topic of an increasing number of media programs
  - However, it is not as revealing or influential as the media and the arts would have us believe!

What Ethical Principles Guide Mental Health Professionals?

- Each profession within the mental health field has its own code of ethics
  - The code of the American Psychological Association (APA) is typical:
    - Psychologists are permitted to offer advice
    - Psychologists may not conduct fraudulent research, plagiarize the work of others, or publish false data
    - Psychologists must acknowledge their limitations
    - Psychologists who make evaluations and testify in legal cases must base their assessments on sufficient information and substantiate their findings appropriately
What Ethical Principles Guide Mental Health Professionals?

• The code of the American Psychological Association (APA) is typical:
  – Psychologists may not take advantage of clients and students, sexually or otherwise
  – Psychologists must follow the principle of confidentiality
    • Exceptions: a therapist in training to a supervisor, Tarasoff’s “duty to protect”

Mental Health, Business, and Economics

• The legislative and judicial systems are not the only social institutions with which mental health professionals interact
• The business and economic fields are two other sectors that influence and are influenced by clinical practice and study

Bringing Mental Health Services to the Workplace

• Collectively, psychological disorders are among the 10 leading categories of work-related disorders and injuries in the U.S.
• The business world has often turned to clinical professionals to help prevent and correct such problems
• Two common means of providing mental health care in the workplace are employee assistance programs and problem-solving seminars
Bringing Mental Health Services to the Workplace

- Employee assistance programs (EAP’s) – mental health services made available by a place of business, and run either by mental health professionals who work directly for a company or by outside mental health agencies
- Stress-reduction and problem-solving seminars – workshops or group sessions in which mental health professionals teach employees techniques for coping and solving problems and for handling and reducing stress

The Economics of Mental Health

- Economic decisions by the government may influence the clinical care of people with psychological disorders
  - For example, financial concerns were of primary consideration in the deinstitutionalization movement
  - Although government funding has risen for people with psychological disorders over the past five decades, that funding is insufficient

The Economics of Mental Health

- The large economic role of private insurance companies has had a significant effect on the way clinicians go about their work
  - Managed care programs and peer review systems have been implemented and criticized by many mental health professionals
Technology and Mental Health

- Today’s every-changing technology has begun to have significant effects – both positive and negative – on the mental health field
  - Examples: the Internet, cell phones, video games, and social networking

New Triggers and Vehicles for Psychopathology

- Our digital world provides new triggers and vehicles for the expression of abnormal behavior
  - Example: individuals who grapple with impulse-control problems and/or paraphilias
- Some clinicians believe that violent video games may contribute to the development of antisocial behavior, and perhaps to the onset of conduct disorder
  - A number of clinicians also worry that social networking can contribute to psychological dysfunctioning in certain cases

New Forms of Psychopathology

- Research also indicates that today’s technology also is helping to produce new psychological disorders
  - Internet addiction is marked by excessive and dysfunctional levels of texting, tweeting, networking, Internet browsing, etc.
- Similarly, the Internet has brought a new exhibitionistic feature to certain kinds of abnormal behavior, for example, posting videos of self-cutting
Cybertherapy

- Cybertherapy is growing as a treatment option by leaps and bounds.
  - Examples include: long-distance therapy using Skype, therapy offered by computer programs, treatment enhanced by video game-like avatars, and Internet-based support groups.
- Unfortunately, this movement is not without its problems, including a wealth of misinformation and a lack of quality control.

The Person Within the Profession

- The actions of clinical researchers and practitioners not only influence and are influenced by other institutions, they also are closely tied to their personal needs and goals.

The Person Within the Profession

- Survey have found that as many as 84% of therapists have reported being in therapy themselves at least once.
  - Their reasons are largely the same as those of other clients, with emotional problems, depression, and anxiety topping the list.
  - It is not clear why so many therapists report having psychological problems.
  - Possible theories include: job stress, increased awareness of negative feelings, biased entry into the field itself.
The Person Within the Profession

• The science and profession of abnormal psychology seeks to understand, predict, and change abnormal functioning, but we must not lose sight of the fact that mental health researchers and clinicians are human beings, living within a society of human beings, working to serve human beings.