How Should Forensic Psychiatry Police Itself? Guidelines and Grievances: The AAPL Committee on Ethics

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More than one hundred years ago, Isaac Ray, in a footnote in the fifth edition of *A Treatise on the Medical Jurisprudence of Insanity* noted:

> It may be proper perhaps to inform the reader that the exclusive competence of medical men to give opinions as experts in cases of doubtful condition of mind has, at different times, been warmly disputed.[1]

Into this long-running dispute as to whether psychiatrists should testify as experts in forensic matters, the AAPL Committee on Ethics warmly welcomes our esteemed colleague, Alan A. Stone. He has raised "serious questions about the basic legitimacy of forensic psychiatry."[2] At the initial presentation of his paper (the lead article in this *Bulletin*), he touched a "sensitive nerve" as evidenced by the vehemence, and indeed, the anger in some of the questions and responses that ensued. To some in the audience, mostly practicing forensic psychiatrists, his talk apparently seemed like a nightmare, frightening in its unrelenting criticism. On the other hand, to many of us who had been pondering the issues Stone was raising, there was no doubt that for the time being, this was *the* statement of many of the fundamental ethical conflicts that inhere in the practice of forensic psychiatry.

It was the awareness of such ethical conflicts that led the founders of the American Academy of Psychiatry and the Law (AAPL) to create a Committee on Ethics in the original bylaws of the Academy in 1969. As Stone noted, Pollack and Rappeport, the first and third presidents of the Academy, had long pointed to serious ethical concerns.[3]

Throughout the history of forensic psychiatry, it was well understood that functioning in the adversarial system of the legal process creates inescapable professional tensions and conflicts. To cite one example, Guttmacher and Weihofen in their classic 1952 textbook, *Psychiatry and the Law,* discuss the use of the "impartial expert" as a means of avoiding some of these tensions and conflicts.[4] Seven years later, but still a decade before the establishment of the Academy, Diamond in his seminal article, "The Fallacy of the Impartial Expert,"[5] demurred, implying it is virtually impossible not to intrude one's personal values into a professional opinion:

> I claim that there is no such thing as a neutral, impartial expert. No matter whether a psychiatrist is engaged by the defense or the prosecution or is allowed to remain completely outside the system of adversary conflict, he is bound to be biased and partial and strongly motivated toward advocacy of his particular prejudiced point of view.[6]

Dr. Weinstein is currently the Chairman of the AAPL Committee on Ethics.

I cite this as an example of the serious attention that forensic psychiatrists have paid to many, if not all, the ethical issues Stone has raised. For, to imply, (as some might think Stone has), that forensic psychiatrists have been unaware or denying (in the dynamic sense) these awful (and occasionally awesome) dilemmas is a serious misimpression.

In turning to his "basic question,"[7] Stone hauls out a big gun, Immanuel Kant: "concerning the question whether the mental condition of the agent was one of derangement or of a fixed purpose held with a sound understanding, forensic medicine is meddling with alien business."[8] Kant's opinion is not news to those who have studied the history of forensic psychiatry. Isaac Ray, in the footnote cited above, after informing us of the "dispute" as to whether it is "the exclusive competence of medical men to give opinions as experts in cases of doubtful conditions of mind," noted "The celebrated Kant, by whom the dispute was begun, contended that such cases ought more properly to be submitted to the Philosophical Faculty" (citations omitted).

Ray then treats us to a concise review of the literature, opining that Kant's "arguments were satisfactorily answered by Metzger... and others, and the controversy was set at rest until the trial of Henriette Cornier at Paris, which led to its revival with renewed vigor."

But, Ray continues, there are contrary opinions:

> Coste, a French physician... and Regnault, a Parisian advocate, who wrote a book on the subject... have hotly contended that any tolerably sensible, well-informed man is as competent as a Pinel or an Esquirol to form opinions for judicial purposes relative to cases of doubtful condition of mind.

Then, with thinly veiled contempt, Ray states,

> The arguments — or more properly speaking, the assumptions and declamations — of these writers, have been severely handled by their opponents... and the controversy may be considered as once more at rest, precisely where it was found.

He concludes,

> We have not thought it worthwhile to discuss this question, for the simple reason that the objections against receiving the opinions of physicians as experts are altogether founded in gross ignorance, misconception, and prejudice, without even a plausible show of support."[9]

While Stone presented a concise statement of various ethical and philosophical issues, and argued his points tellingly, those, like the members of the AAPL Committee on Ethics, who have been ruminating about these issues for many years, found, I believe, little that was new, and it should be added, little that was truly helpful in our work. Nor, do I assume, was it intended to be.

By contrast, one major purpose of the Academy is to help forensic psychiatrists with their work. And one purpose of this article is to demonstrate we have not been unaware of the questions Stone raises.

The by-laws of AAPL state that "The Committee on Ethics will develop guidelines for the ethical concerns of the organization and will consider such

questions of ethics that might be brought to its attention by the Executive Council."[10] While the first directive is clear — to develop guidelines — the second is somewhat ambiguous. Does it refer to specific ethical complaints (grievances) against forensic psychiatrists or rather only to abstract ethical questions?

There always has been a strong undercurrent of sentiment that the Academy should investigate complaints against colleagues who are accused of acting unethically. In other words, the Committee on Ethics should function as a grievance committee, on the model of other professional groups, to provide self-regulation in the public interest. Through the years various members of the Academy, noting that it is the foremost organization of physicians interested in psychiatry and the law, have suggested that it might be suitable for the AAPL Committee on Ethics to act as monitor of the subspecialty, investigating and taking action in cases such as that of Dr. Grigson, which Stone uses as an example. Their model is that of the Ethics Committees of our umbrella organization, the American Psychiatric Association. (Membership in the APA is *required* for membership in AAPL.) In the APA, each District Branch has an Ethics Committee that receives and investigates complaints against its individual members.[11] There is a detailed procedure that must be followed (to provide for procedural "due process") and appeal mechanisms.[12]

While this idea has attractive aspects, especially as a means of maintaining a level of excellence in the practice of forensic psychiatry, there are strong arguments to the contrary. In the first place, AAPL (as is stated clearly in its by-laws) "is organized exclusively for educational, scientific and charitable purposes."[13] Second, as an organization, AAPL lacks the resources (of all types) to sustain such an effort. Third, there are doubts whether AAPL has any substantial sanctions to apply. Fourth, taking action, if only to investigate complaints, might expose the organization to a variety of liabilities: claims of restraint of trade and libel, to name only two. Finally, there remains the option, in egregious cases, to bring investigations and impose sanctions through the mechanisms of the APA.

As relates to Dr. Grigson, Stone believes there is no basis for an ethical complaint; "there is no neutral general principle by which Dr. Grigson can be called unethical."[14] Stone argues that the special annotation, number 3 of section 7, giving diagnostic opinions about a patient not examined,[15] is not applicable. Further, Dr. Grigson's testimony is received in answer to a "hypothetical question" thereby eluding the double-agency problem. There are contrary opinions, of course, and ethical complaints against Dr. Grigson are, I am told, being pursued.[16]

Incidentally, Stone does not discuss the Grigson case in light of annotation number 4 of section 1, which prohibits participation in executions. "A psychiatrist should not be a participant in a legally authorized execution."[17]

There remains another approach: to add to the APA's special ethical annotations (to the AMA ethical principles) those ethical guidelines especially or uniquely applicable to forensic psychiatry. This route has been tried, with mixed results. The subject was prearraignment psychiatric evaluations for the prosecutor.[18] This practice, with its problematic consent issues, was thought to be an

abuse of psychiatry by a number of AAPL members, and an effort was made by Tanay, Goldzband, and others through the now defunct APA Committee on Psychiatry and Law to have the Board of Trustees adopt a suitable annotation. The Board, advised by Dr. Stone, refused.[19] Only after the Assembly of District Branches adopted this provision was it accepted by the Board. This is now Section 4, annotation 13:

> Ethical considerations in medical practice preclude the psychiatric evaluation of any adult charged with criminal acts prior to, access to, or availability of, legal counsel. The only exception is the rendering of care to the person for the sole purpose of medical treatment.[20]

Reflecting the difficulties in having the APA Principles amended in accordance with the needs of forensic psychiatry, Sadoff, in a letter to the chairman of the AAPL Committee on Ethics stated it was time to

> set down some basic guidelines with respect to the function of the psychiatrist in forensic psychiatry. I say this because of the communication between Alan Stone and Emek Tanay recently regarding prearraignment examinations and their status as ethical or unethical in psychiatry.[21]

Developing separate guidelines for the practicing forensic psychiatrist has been a major effort of the AAPL Committee on Ethics. As with the issue of grievances, there was debate as to the manner in which AAPL should involve itself. Again, there was some strong sentiment for AAPL to take a strong proactive stance and set out its own "Principles," ethical principles that would stand outside the APA and AMA principles.[22] The sentiment was that AAPL is particularly suited for such a role since its members comprise the foremost practitioners in forensic psychiatry. Matters of ethics have been debated, presented, and published throughout AAPL's existence.[23] Furthermore, other professions that practice in the legal context have set forth their own ethical principles. But the Committee has been concerned that the developing of separate ethical principles for practice in forensic pychiatry might be regarded as setting forth "standards of practice," and these could be used in litigation against forensic psychiatrists. For this reason the terms "principles" and "standards" were avoided, and the term "guildelines" adopted.

At the start of his article, Stone stated that "As far as I can see, forensic psychiatrists are without any clear guidelines as to what is proper and ethical."[24] This is not entirely true. A provisional set of guidelines has been presented to the membership for comment (of course, at this point they do not represent the official policy of AAPL).

How were these guidelines being developed? In the late 1970s, Jonas Rappeport, the first chairman of the AAPL Committee on Ethics, after a series of discussions with the committee, proposed a set of guidelines that he presented to the membership for comments.[25] He titled these "Ethical Guidelines for Forensic Psychiatry — A Proposal." He emphasized "these guidelines represent my personal views, ...and some are presented in an exaggerated form in order to stimu-

late discussion." He requested comments; a representative sampling of these comments will be quoted.

Rappeport's proposal guidelines covered seven topics: I. Expert Qualifications, II. Forensic Opinions, III. Opinions Without Examination, IV. Consent, V. Pre-Arraignment Examination, VI. Confidentiality, and VII. Institutional Treatment Role.

He proposed the following Preamble:

> The American Academy of Psychiatry and the Law, devoted to the highest standards in Forensic Psychiatry, recognizes a need to furnish guidelines for ethical behavior in forensic psychiatry. We recognize that it is difficult to work in this field and not disagree with colleagues and question their opinions. We further recognize that a field crossing professional lines is loaded with pitfalls for the unwary. We recognize that at times some have acted in a manner others deem unethical.[26]

Rappeport's first guidelines related to the specifics of the qualifications of the psychiatric expert witness:

> **I. Expert Qualifications** Qualifications should be presented without exaggerations or false claims. Expertise should be claimed only in areas of knowledge and actual experience. Extreme caution is warranted in situations where experience in general psychiatry may not truly qualify one, i.e., evaluation of young children or persons whose situations are unfamiliar, as foreign cultures, prisoners, etc.

In response to this section, Jacques Quen wrote:

> Jonas, the expert witness is supposed to be sufficiently more expert than the jury to give them assistance and guidance in understanding what they do not have the training to appreciate. It does not mean, nor should an ethical standard be imposed, that means more expert than other experts. Also, since one is under oath in court, it should be aimed at attorneys rather than left ambiguous.[27]

Thus, these alternative formulations involving fundamentally different perceptions of the expert witness are before the Committee for decision. But there were few comments on this section as contrasted to the next guideline, which was quite controversial.

The second of Rappeport's proposed guidelines related to the forensic psychiatrist's expert opinion itself and clearly touched on some matters of great concern to Stone. It relates, for example, to what Stone referred to as the "fact-value distinction," which he claims has been "regularly blurred, ignored, or confused in psychiatric testimony and in the law and psychiatric literature."[28]

> **II. Forensic Opinions** Opinions should be based upon all available data resulting from a concerted effort to obtain arrest reports, confessions, witness reports, etc. Opinions should clearly differentiate verified from unverified data and distinguish between scientific fact and clinical impressions. Reports should reflect sound clinical judgment, and not be adversarial in nature. Novel ideas and unusual or personal theories should never be used in explaining behavior.

This section of the proposed guidelines elicited considerable response. Carl

Malmquist wrote that he found the proposed guidelines in general to be "stimulating" but added that as to forensic opinions

> I believe it should be specified that it is the responsibility of the respective attorneys to obtain all available data and forward it to the examining psychiatrists. Situations where I have operated otherwise lead to the implication that somehow the psychiatrist has been at fault for not obtaining every conceivable document.[29]

Robert Sadoff, a past president of AAPL, commented extensively on the proposed guidelines including his concern

> about your last statement... [that] novel ideas, unusual or personal theories should *never* be used in explaining behavior. I would suggest that they might be used in explaining behavior as long as they are identified as an unusual or personal theory which helps that particular expert arrive at his opinion. Thus, if he bares his biases to the jury in advance, then he is ethical about his presentation.[30]

"I would not exclude novel or personal theories," Quen responded, "since some of them may turn out to be contributions. They should, however, be identified as not accepted by the majority of the profession if still in an experimental verification stage. Is Szasz unethical for saying that schizophrenia doesn't exist? I doubt it." Quen offered the following substitute: "In reporting expert opinions, psychiatrists should list all sources of data utilized in forming their opinions. Objective facts should be distinguished from subjective data and clinical impressions."[31]

Finally, as regards the exclusion of novel ideas, one colleague in the ensuing discussions of their guidelines remarked to me he has noticed that "today's novel idea is tomorrow's legal doctrine."[32]

Continuing our review of Rappeport's guidelines, his third section related to Opinions Without Examination. Recall that Stone discusses this matter at length in connection with Dr. Grigson's testimony, distinguishing annotation number 3 of section 7 of the APA Ethical Standards. This APA annotation states

> 3. On occasion psychiatrists are asked for an opinion about an individual who is in the light of public attention, or who has disclosed information about himself/herself through public media. It is unethical for a psychiatrist to offer a professional opinion unless he/she has conducted an examination and has been granted proper authorization for such a statement

Rappeport's suggested guideline was as follows:

> **III. Opinions Without Examination**
>
> A. When after earnest efforts, it is impossible to conduct a personal examination, an opinion may be rendered. However, it is the psychiatrist's responsibility to see that all know there was no personal examination and that opinions expressed are therefore limited.
>
> B. In two or three party situations, such as custody cases, it is unethical to present a report to the court as an independent examiner unless all parties are examined by the same examiner. An exception may be made for cases requiring special skills such as young children in which case the examiners will consult and furnish a joint report.

Malmquist wrote that as for Part A. of this section,

I would like to see the sentence and thrust altered as follows. When it is impossible to obtain materials or conduct a personal examination, an opinion may be rendered but it shall never be required. It is the choice of a particular expert whether he believes in any given case that he can express an opinion to a degree of medical certitude.[33]

And as to Part B, Malmquist wrote,

I believe you are running counter to some rules of evidence in various jurisdictions which do not require in custody disputes that all parties be examined by adversary psychiatrists. While it may be desirable, and the parties may always agree to it, it is hardly unethical to do so — that is carry out an independent examination — and express opinion as long as it is clear who has been examined.

Part B was another controversial guideline and elicited a substantial response. Modlin, for example, responded that

III B needs clarification. I have examined several individuals in two or three party situations because only one person was available, and have rendered a limited report, which was useful. In one child custody case I examined the father who was suing for custody because his former wife had been mentally ill and because he had recently remarried and now could provide a good home for his daughter. The examination revealed a relatively uneducated, occupationally shiftless man whose new "wife" was a transsexual. I did not choose between father or mother but did state the father's new household was unsuitable for rearing the daughter.

In another case I examined the mother who was psychotic and barely holding her own with a heavy dose of psychotropic medication and outpatient treatment. She was frequenting taverns with friends of questionable reputation and had difficulty looking after her basic needs. I had no difficulty stating that she was at present in no condition to mother her four-year-old daughter properly. I have had several such cases.[34]

Sadoff wrote

In Section B where you say it is unethical to present a report to the court as an independent examiner unless all parties are examined by the same examiner, I would suggest that if the report is sent to the court where all parties are not examined by the same examiner, then it should be spelled out exactly who examined whom, under what conditions and how the opinion was derived from the various examinations. Thus, I don't think it's unethical per se to send a report unless all parties are examined by the same examiner but that the information is clear to the court exactly what occurred and on what bases and from what sources the examiner arrived at his opinion.[35]

Ted Sidley made the following comment on Section III Part B.

I would disagree somewhat with the notion that in a custody issue it would be unethical to present any opinion unless one had examined all participants. I should think it would be possible at times to examine a person and reasonably to conclude that that person was not fit to take custody. Conversely, I can imagine a situation in which a party would be examined and that we could conclude that there were no apparent psychiatric indications that the individual was unfit to handle custody. Of course, neither of these types of opinions is advisory to the court as to what specific custody arrangements should be made nor whether

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party A should be awarded custody as opposed to party B. In fact, I wonder whether the psychiatrist should make recommendations like that even if he does examine all parties. I should think it would be better if he were to give his thoughts as to the different points to consider and let the court do the considering."[36]

In regard to III (B), Quen wrote,

I think you should omit the section, since some parties may refuse or be uncooperative or unavailable. If [Section II] is followed, then the opinion would reflect that all parties involved were not examined personally.[37]

The fourth of Rappeport's suggested guidelines related to consent issue, which Stone raised in the context of deceiving "the patient in order to serve justice and fairness."[38]

IV. Consent Before a forensic evaluation, the psychiatrist must provide the following information:

A. That he is a psychiatrist, but that this is not treatment, and that the examiner is not his "doctor."

B. For whom he is conducting the examination.

C. What he will do with the information gained as a result of the examination.

D. What could result from such disclosure of the information.

Modlin thought "that D is unworkable since there are too many unforeseen consequences, and it could backlash later in time."[39]

Sadoff commented that

With respect to Section Four on Consent, I would agree with your four caveats about what a psychiatrist should tell the prospective evaluee, but I would add a fifth and that is that the psychiatrist should tell the examinee that he does not have to talk to the psychiatrist if he doesn't wish to and that he may stop the interview at any time that he wishes. This may not be true in some forensic cases where the interview is necessary for the presentation of an insanity defense for example, but the defendant's attorney may be present and may advise him accordingly.[40]

Sidley also thought

it would also be worthwhile for the psychiatrist examining the individual to give him the opportunity not to cooperate — particularly unless he consults his attorney first. And you did not explicitly mention that the psychiatrist cannot guarantee any confidentiality to the examinee. The four points you suggest imply that but do not say so explicitly."[41]

Quen stated that this section on consent was

likely to open a can of worms. You're describing (in my view) a criminal law situation where the competence to give informed consent is not an issue. How about a guardianship hearing for a severely mentally retarded individual? To evaluate somebody for a guardianship hearing, say a 79-year-old parent, who is slightly paranoid but sincerely believed to be in need of a guardian the kind of even preliminary examination necessary to let the children know if a court hearing is even likely to be feasible, may require a truncated examination in a social

situation without disclosure. (I was recently asked to give such an opinion for a friend, and it would have been almost impossible to do if I had announced that I was a psychiatrist, etc. Yet she had a right to a warranted parens patriae action.)[42]

I also suggested that as part of the consent situation, the evaluating doctor should state to the evaluee that he or she has the right not to participate in the evaluation, and, further, the forensic psychiatrist should include the specific details as to the obtaining of consent in his written report.[43]

The fifth of Rappeport's suggested guidelines related to:

V. Pre-Arraignment Examination A defendant may not be examined or hospitalized for forensic purposes without the knowledge of his attorney or without a competent, fully informed waiver. This should not interfere in any way with immediate emergency care.

Quen asked the following questions: "What if one is called for immediate emergency care, and it turns out, after conducting an examination that it is not an emergency or that it is and the individual required care for an LSD or angel dust reaction? Should one refuse to testify under subpoena?"[44]

This section refers, of course, to the problem discussed above, for which a special annotation of the APA ethical principles was obtained. It goes further, however, prompting Sidley to state that Section V "implies that the psychiatrist shouldn't even be talking to the examinee without prior permission from the attorney. In my experience there are many situations in which that can't be done. Maybe it would be better if we did operate on that basis, though."[45]

The Sixth section of Rappeport's guideline involves a matter of grave concern to all psychiatrists but especially to forensic psychiatrists.

VI. Confidentiality:

A. It is the psychiatrist's responsibility to see that none of the information he receives falls into the hands of unauthorized persons.

B. He has an absolute obligation of confidentiality with the hiring attorney and may not discuss the case with anyone of the adverse party without proper permission.

C. Prior to any initial discussion of a case with an attorney, the psychiatrist must clarify whether or not this initial conversation will interdict any consideration of consulting for the adverse party should he decide that he cannot assist this original party. If this is not clarified, then it is unethical to consult with the other side.

Sidley wrote that as regards (C) above,

I'm not sure about the ethics of consulting with "the other side." My assumption is that when one is engaged by an attorney his role is to try to help that attorney develop his best case. While it may be that the best case the engaging attorney ends up with is a zero case, it seems to me like conflict of interest for the psychiatrist to be engaged subsequently by the opposite party.

I can't think of any way of an attorney's sanctioning that his own psychiatrist would end up consulting with the other side. If a psychiatrist enters a case at the behest of the court, he could perhaps discuss the case with both attorneys. That type of situation could be so complicated. It hasn't happened in my experience, at least in a disputed way. I think there may have been a couple of cases in which

both the prosecutor and defense counsel read my report and asked me a few questions. But that is different from my attempting to give advice as a person engaged by a party to the case.[46]

Quen suggested that in part (B) the phrase "in the service of the adverse party" should be omitted. The forensic psychiatrists, he said, "should not discuss the case with *anyone* not in the employ of the hiring attorney, period." And, in regard to part (C), "How about examining the individual, giving an adverse opinion to the hiring attorney, being 'un-hired' and then being approached by the other side? Nothing unethical according to the AMA, APA, or our guidelines."[47]

It should be noted that the AMA Principles of Medical Ethics state simply, "A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidence within the constraints of the law." To this the APA adds no less than thirteen separate annotations![48]

The seventh and final section of the suggested guidelines, "Institutional Treatment Role," relates, of course, to the "double-agent conflict."[49]

> **VII. Institutional Treatment Role** It is the psychiatrist's responsibility to clarify in writing with his employers, exactly what his role is with reference to confidentiality, and other responsibilities, and to see that anyone who confides in him is aware of any limitations to the relationship.

Malmquist wrote that this section "needs expansion, and perhaps it is just an introduction." Quen thought this section "vague and ambiguous in its intent. I'm not sure what you're concerned about here, and I think it ought to be spelled out."[50]

Sadoff also was "not sure what is meant in Section VII, Institutional Treatment Role," and proceeded to parse this section of the guidelines. As to the statement that "it is the psychiatrist's responsibility to clarify in writing with his employers," he asked whether that means

> his institutional employers, the owners of the hospital, the state, the regents of the University or are you talking about the lawyers or judge who hires him, exactly what his role is with reference to confidentiality and other responsibilities (what other responsibilities with respect to the patient, with respect to the institution or with respect to himself?) to see that anyone (who does that mean anyone? Any patient, any person working in the institution, fellow employees, etc.?) who confides in him (is confiding in him only professional confidence in the course of hallway consultation?) is aware of any limitations (what limitations? legal, moral, ethical, medical) to the relationship (what relationship? ethical, medical) (the professional relationship, the treatment relationship, the employee-employer relationship?).[51]

I also wrote

> As regards VII, Institutional Treatment Role, I think that it is important also for this section to include a statement distinguishing between the roles of treatment and evaluation in a forensic psychiatric setting. It might also be suitable at this point to include sugestions in regard to how the evaluee is to be labeled in all such matters (defendant, detainee, patient, etc.).[52]

Similarly, Francis J. Durgin requested that the Committee on Ethics "con-

sider the question of conflict in roles between trying to psychotherapeutically treat and testify regarding (for or against) the same subject." He cited the following example: "I have a patient in therapy right now who spent over two years in therapy with a psychiatrist who was attempting to assist her attorney in litigation. Both his therapy and testimony were unsuccessful — at a great financial and emotional cost to his patient."[53]

Sidley made the following general request for caution.

> Formulating an ethics code seems like an important thing to do, but it also seems like a situation in which, because of limitations of language, it is easy to formulate statements which don't do what one wants them to do. I recommend that we go slowly before officially adopting any code of ethics. You've made a great start, but there are many unforeseeable situations that will end up forcing a modification of different principles. Better those modifications should be made before than after the principles are official policy.[54]

Sidley is clearly quite sensitive to ethical matters and has written on these subjects. But I have spoken to other members who have expressed somewhat different attitudes. I recall one colleague saying (I hope, tongue in cheek) "I'm ethical, but I'm worried about the psychiatrist on the other side." Another colleague stated that he believed ethics was "no more than common sense." It is the hope of the Committee on Ethics that as a result of our presentations and deliberations the membership of AAPL will come to appreciate that what is common sense to one forensic psychiatrist may appear to be nonsense to another. In a similar vein, it might be said that one practitioner's "reasons" for a particular judgment may appear to another practitioner to be nothing more than rationalizations.

What is the future of the AAPL Committee on Ethics? Our expectation is that it will become even more relevant as the subspecialty of forensic psychiatry continues to mature and organize itself more professionally.

New matters are regularly being brought to the attention of the Committee. For example, on March 9, 1983, the General Assembly of the United Nations adopted *"Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment."*

Of these Principles, two sections are particularly of concern to the Committee on Ethics:

Principle 3 states "it is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health."

A number of colleagues are concerned that Principle 3, if adopted, would seriously affect the practices of Forensic Psychiatry in relation to pretrial assessment for the Courts in general but especially in regard to the assessment of dangerousness and the use of indeterminate sentencing.[55]

Principle 4 states

> It is a contravention of medical ethics for health personnel, particularly physi-

cians:... (b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

Halpern wrote he is concerned

that many psychiatrists believe it to be ethical to participate in the psychiatric evaluation of prisoners sentenced to death to determine their mental fitness to be executed. My interpretation of Principle 4 (b) is that such participation would violate the United Nations resolution of December 18, 1982. I wish, however, that I knew what was meant by "relevant international instruments."[56]

This matter has been placed on the agenda of the Committee on Ethics.

Dr. Stone's talk and article have inspired the Committee to undertake some additional tasks. We hope in the near future to issue tentative, provisional guidelines relating to "determinism v. free will," the "deconstruction of the self," the "mind-brain problem" and the "normal science-morality chasm."[57] But seriously, we know that "by definition ethical problems remain unresolved. By their unresolved quality, they provoke a continuous anxiety in the practicing psychiatrist and concomitant a desire to search, to oppose, to think, and to research."[58] It is in this spirit that the Committee on Ethics renews its commitment to explore and study "the essential moral issues of the age."[59]

The forensic psychiatrist travels a difficult road, perhaps, as Stone implies, on a personal as well as professional moral journey. The road metaphor is common. We are neither willfully ignorant of nor blind to its hazards. On the contrary, to paraphrase Dante, we often "Wake to find ourselves in a dark world, where the right road is wholly lost and gone."[60] We realize the practice of forensic psychiatry is "a minefield" of ethical problems,[61] and we appreciate Stone's mapping some of the "minefield" for us. We respect that Stone's values do not permit him to practice forensic psychiatry,[62] but for those of us who undertake the practice of this profession, the AAPL Committee on Ethics hopes to assist in leading the way through the ethical minefield, for, as Slovenko has written, "good professionalism is ethical professionalism."[63]

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11. Chapter 10, Section 1, By-laws, American Psychiatric Association, 1981 Revision
12. See generally, Procedures for handling complaints of unethical conduct. In The Principles of Medical Ethics With Annotation Especially Applicable to Psychiatry, 1981 Edition. Washington, DC, APA, 10-20

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14. Stone, supra note 2
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17. Principles of Medical Ethics, supra note 12 at p. 4
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19. Minutes, December 9-10, 1977, meeting of APA Board of Trustees. See Correspondence, Stone A. Letter to M.G. Goldzband, January 18, 1978; Letter to E. Tanay, February 15, 1978; letter to A.L. Halpern, February 15, 1978; letter March 8, 1978 to E. Tanay
20. *Principles of Medical Ethics*, supra note 12 at p. 7
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22. Quen JL: infra note 25. Also, AAPL By-laws, Art. II, Section 2(b). "The development of standards of practice in the relationship of psychiatry and the law."
23. Weinstein H et al: Panel: Ethical issues in the practice of forensic psychiatry. J Psychiatry Law Spring 1982
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25. Newsletter, AAPL, March 1981, 23
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28. Stone A: supra note 2
29. Malmquist CP: Letter February 5, 1981 to J.R. Rappeport
30. Sadoff RL: Letter February 9, 1981 to J.R. Rappeport
31. Quen: supra note 25
32. Personal communication from A.L. Halpern
33. Malmquist: supra note 29
34. Modlin HC: Letter February 9, 1981 to J.R. Rappeport
35. Sadoff: supra note 30.
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37. Quen: supra note 25
38. Stone: supra note 2. Also note, Task Force on Psychiatric Participation in the Sentencing Process, APA, 1982
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