Perceptions of Ethical Problems by Forensic Psychiatrists

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A survey was undertaken of the opinions of two groups of forensic psychiatrists to determine their views regarding forensic ethical issues. Although AAPL has made significant strides for our profession by adopting ethical guidelines, some important issues have not yet been addressed, as revealed by our survey. Included were items heretofore considered too "controversial" for incorporation into guidelines, as well as items from the APA ethical framework. All APA items were evaluated as addressing ethical problems. The majority of respondents also viewed most of the "controversial" items as confronting relevant ethical problems, thereby suggesting their inclusion, in some form, in the profession's guidelines. They also appeared to favor retention of many traditional medical ethical values when functioning as a forensic psychiatrist. Clear selective discrimination existed among differing death penalty facets. Since AAPL at present does not wish to conduct its own ethics hearings, the AAPL guidelines as well as the items supported in this paper's survey would best be translated into a form consistent with the APA framework. In this way, AAPL's guidelines and also the new suggested items could readily be coordinated within the APA framework and could play a role in the APA local district branch enforcement process.

Ethical problems in forensic psychiatry are unduly and often unfairly highlighted when criminal cases are sensationalized by the media. In addition, unpopular judicial decisions sometimes are blamed unfairly on psychiatry and the "battle of the experts." Traditionally, medicine and psychiatry endeavor to help both individuals and society. On the other hand, the legal system focuses on settling disputes, and the criminal justice system has varying goals of containment, retribution, deterrence, and currently to a much lesser degree, rehabilitation. It is not intrinsically clear to what degree the forensic psychiatrist should adopt those values of the legal and criminal justice systems which are contrary to traditional medical values.

AAPL[1] considered these problems for many years in its Committee on Ethics which led to the development of ethical guidelines. The American Psychiatric Association in the *Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry,*[2] largely independ-

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ent of AAPL, has included some important forensic psychiatric problems which fall within its ethics framework. Stone[3] raised important questions regarding the ethics of forensic psychiatry but was pessimistic about resolving the ethical dilemmas. The *Principles*[2] do not confront Stone's concerns regarding the potential pull to twist the rules of the justice system to help a patient or to be seduced by the adversary system's power.

Pollack[4] defined forensic psychiatry as the application of psychiatry to legal issues for legal purposes and ends. He proposed that the forensic psychiatrist apply psychiatry to legal issues, with ethical neutrality, essentially for whatever purposes and ends the legal system desired. He believed his proposal to be a consequence of his definition. However, it is far from clear that ethical neutrality should be decided arbitrarily by definition or that Pollack's fiat is accepted by most forensic psychiatrists, even if it might be welcomed by some attorneys. With the current lack of interest by the criminal justice system in rehabilitation and the return of harsh punishments including death penalties, the forensic psychiatrist may be asked to perform functions conflicting with traditional medical values. Such roles often cannot be rationalized as beneficial to society nor can they be resolved adequately by arbitrary definitions. The distinction between patients and forensic evaluees is not necessarily helpful since precedent exists for applying medical ethics to evaluees who are not patients.

According to the Hippocratic oath,[5] "I will use my power to help the sick. . . . I will abstain from harming or wronging any man by it. . . . " It does not refer solely to patients but refers to medical power and makes no distinction, in some translations of the oath, between nonpatients and patients. Although the Hippocratic oath is not part of formal medical ethics, its ideals are part of a long medical tradition not readily discarded. *Primum non nocere,* whose exact origin is unknown, expresses the idea that avoidance of harm comes before all else. Conflicts with Hippocratic principles are especially unavoidable in situations in which the criminal justice system tries to achieve retribution.[6]

The *Current Opinions of the AMA Council on Judicial Affairs*[7] states, "Ethical standards of professional conduct and responsibility may exceed but are never less than nor contrary to those required by law. . . . In the ethical tradition of Hippocrates and continually affirmed thereafter, the role of the physician has been a healer. . . . A physician's responsibilities to his patient are not limited to the actual practice of medicine." In a situation analogous to a forensic evaluation, i.e., a preemployment physical examination by a physician hired by the employer, "no physician relationship exists between the physician and the examinees." Nonetheless, the information "obtained by the physician as a result of such examinations is confidential and should not be communicated to a third party, without the individual's prior written consent, unless it is required by law. If the individual authorizes the release . . . the physician should release only that information which is reasona-

bly relevant to the employer's decision regarding that individual's ability to perform the work required by the job." The implication is clear that some aspects of medical ethics may apply even when evaluees are not patients. Analogously, aspects of medical ethics could apply in a forensic evaluation. Moreover, the psychiatric profession can set a higher ethical requirement than the minimum required by the law.

AAPL[1] in a very important development recently adopted a set of ethical guidelines which address fundamental ethical problems. However, AAPL has not yet addressed some significant issues revealed by the Committee on Ethics of the Psychiatry and Behavioral Science Section of the American Academy of Forensic Sciences (AAFS) in two surveys of its members.[8,9] In the write-in section of the first survey, the "hired gun" problem in forensic psychiatry was of most concern to the largest number of respondents, followed by: becoming an advocate and not giving an honest evaluation, confidentiality, patient versus societal obligations, testifying in court without adequate knowledge, and the differences between medical and legal ethics. The first study's questionnaire, adapted from Monahan's,[10] showed that the issues of most concern, in descending order were: breach of confidentiality, right to refuse treatment, pretrial evaluation prior to attorney consultation, conflicting loyalties to patients and to the payer of one's salary, and the differing ethics of the medical and legal professions. Significant disagreements existed regarding the ethical issues of contributing in *any* way to a death penalty verdict, a right to rehabilitation, a positive effect of therapy, and the prediction of dangerousness. Only 6.2 percent of the respondents reported no ethical problem in their work.

The American Board of Forensic Psychiatry,[11] recognizing the necessity for the profession's own ethical guidelines, made a significant contribution in its new definition of forensic psychiatry by concluding its definition with the statement that forensic psychiatry "should be practiced in accordance with guidelines and ethical principles enunciated by the profession of psychiatry." The new definition rejects relegating ethics to the courts and recognizes the responsibilities of the psychiatric profession. It is included in AAPL's current ethical guidelines, implying that AAPL agrees that the psychiatric profession itself should determine what is ethically proper.

Because of the presence of diverse views, the paucity of relevant data, and the absence of surveys by AAPL or the APA, the AAFS Committee on Ethics conducted a second survey of two groups of forensic psychiatrists to determine their views on aspects of forensic psychiatry already included in the APA's *Annotations.*[2] In addition, aspects addressed in the APA's *Opinions of the Ethics Committee*[12] were included. An attempt also was made to examine controversial ethical issues not already a part of existing professional guidelines. The results were analyzed to determine whether the issues could be incorporated into APA's ethical framework, or alternatively considered as annotations or

opinions regarding them. At present, AAPL's Committee on Ethics has decided not to investigate ethical complaints but has relegated this function to the local APA district branch in accordance with the APA's ethical framework. Therefore, it is important not only to consider issues as possible additions to AAPL's ethical guidelines, but also how they might be considered within the APA ethical framework, e.g., as possible additional Annotations to or Opinions on the *Principles of Medical Ethics.* They could also be considered as opinions by AAPL regarding the APA's Annotations on matters pertinent to forensic psychiatry. Otherwise, although AAPL's ethical guidelines could be considered as good forensic practice, their input into the APA's enforcement mechanism would be relatively limited. Similarly, AAPL's existing ethical guidelines also would benefit from translation into a form consistent with the APA enforcement mechanism. In order to prevent unwarranted use by courts against practitioners in areas where there is significant minority disagreement, the guidelines also could distinguish between good forensic practice and practice warranting possible sanctions. Dyer[13] makes an equivalent distinction between ethics in the upward perspective, referring to good practice or ideals towards which practitioners should strive; and ethics in the downward perspective, referring to the imposition of sanctions.

Methods

In the most recent study[9] from October 1986 to February 1987, a group of forensic psychiatrists and four AAFS psychologists were surveyed regarding their views on the APA ethical issues relevant to forensic psychiatry, as well as on a number of "controversial" ethical issues. The surveyed group included 104 members of the Psychiatry and Behavioral Science Section of AAFS. Since two members were deceased, only 102 members remained. The response rate was 60.7 percent.

For comparison purposes, the New York area Tri-State chapter of AAPL also was surveyed. Only 15.8 percent of 221 members responded. The low AAPL response rate probably resulted from distributing the questionnaire at the back of a newsletter, with no enclosed stamped addressed envelope, in contrast to the AAFS individualized mailing with stamped return envelopes. The low rate of Tri-State AAPL responses may render the results not necessarily representative of this group. However, the results are included because of their striking similarity to AAFS results. Ratings are given for each group. Percentages of the entire respondent group for those who did and did not see issues as ethical problems are given only for AAFS. The questionnaire included items from the *Principles*, *Annotations*, and *Opinions of the Ethics Committee* but did not identify the source. New "controversial" issues also were included.

Each respondent was asked whether he/she perceived an ethical problem in a series of potential situations encountered by a forensic psychiatrist. There were five points of response. In this

study, scoring was done by rating "definitely yes" with 5 and "qualified yes" with 4. "Definitely no" received 1, "qualified no" 2. The percentages of "no answer" were not scored but were included in the respondent group for which percentages were calculated. "No opinion" is listed separately since the meaning of "no opinion" may be ambiguous. A mean score was obtained. A maximum score of 5.0 thus would be found if each respondent believed the issue posed definite ethical problems. A minimum score of 1.0 would be obtained if all respondents believed the issue presented no ethical problem. A score of 3.0 would mean a total absence of consensus. An additional question asked, "Do you believe our ethical guidelines should contain a provision which treats death penalty matters as different because of their special seriousness?"

Results

As can be seen in Table 1, many ethical issues relevant to forensic psychiatry are included in the APA's *Annotations* and *Opinions.* In the respondent's opinions, all items addressed ethical problems. Table 2 lists other forensic issues believed to address ethical problems. Table 3 lists issues not considered ethical problems or which generated significant differences of opinion. None of the APA items generated results in this category, but they are all in the "ethical problem" category.

Discussion

All included issues from the APA's *Annotations* or *Opinions* were perceived by respondents to address ethical problems. Since these items were not identified in the questionnaire, the results suggest that the respondents agree with their inclusion regardless of their familiarity with their source. These APA items apparently can be considered to represent an important foundation for forensic psychiatric ethics. Most noncontroversial AAPL items were not included as such in the survey since the AAPL guidelines were in development at the time of the survey, but most AAPL issues were included within the APA framework and thereby are indirectly included in the survey. The "hired gun" problem was not included because it already was shown to be an ethical problem of strong concern in the first survey.[8]

Most, but not all items from Table 2, can also be considered readily within the APA framework with few exceptions. Section 4 of the *Principles* states, "a physician shall respect the rights of patients ... and shall safeguard patient confidences within the constraints of the law." Items 6 and 7, Table 2 refer to rights of prisoner-patients. Item 3, Table 2 involves violating confidentiality by reporting marijuana usage to prison authorities, ignoring a contrary promise. Opinion 4H refers to the relevant problem of "double-agentry." AAPL's new guidelines[1] do address confidentiality matters in Section II. These issues, therefore, could readily be added to this section. However, AAPL takes a lesser position on prisoner rights by referring to prisoners' right to refuse under Consent. AAPL requires only familiarity with the rules in the jurisdiction regarding the right to refuse treatment.

Table 1
Respondents' Perceptions of Issues in APA Ethics Framework

Issue	AAFS				Tri-State AAPL Rating
	Rating	Ethical Problem			
		% Yes	% No	% No Opinion	
1. Does not describe lack of confidentiality in legal competence evaluation	4.78	91.9	3.2	0.0	4.54
2. Lawyer gives name to clients for fee	4.76	91.9	3.2	0.0	4.48
3. Claims expertise where no experience	4.71	88.7	4.8	3.2	4.54
4. Raises no objection whenasked to violate psychiatric ethics	4.68	91.9	4.8	0.0	4.40
5. Does not apprise patient of consequences of waiving privacy	4.59	88.7	4.8	1.6	4.18
6. Permits certification for involuntary treatment without personal examination	4.64	88.7	4.8	3.2	4.45
7. Pretrial evaluation prior to attorney access or availability and not solely for treatment	4.52	90.3	4.8	1.6	4.18
8. Ordered to reveal patient confidences yet makes no effort to preserve confidentiality when need for disclosure is questionable	4.31	82.3	6.4	6.4	3.94
9 Reveals irrelevant material which can be used to press settlement	4.10	67.8	16.1	6.4	4.04
10. Is a participant in a legally authorized execution	4.08	61.3	21.0	14.5	3.87

Item 5, Table 2 calls attention to an evaluee's potential confusion of the forensic psychiatrist's role with traditional psychiatric roles and the need to clarify it continually to an evaluee who misunderstands it. Stone,[3] however, raised the point that "informing the examinee of the fact that you are a double agent is necessary but not sufficient. Skilled interviewers . . . will create a relationship in which the examinee can readily forget that he has been warned. It is no accident that good clinicians are often emotionally seductive human beings who inspire personal trust." Gutheil and Appelbaum[14] wrote, "the mentally ill person sent from the court may turn to the evaluator as parent, lawyer, savior, advocate, ally, or simply 'my clinician;' in doing so the patient may draw upon

Table 2
Respondents' Perceptions of Other Ethical Problems

Issue	AAFS				Tri-State AAPL Rating
	Rating	Ethical Problem			
		% Yes	% No	% No Opinion	
1. Misrepresents a portion of the data (AAFS Code)	4.78	91.9	1.6	3.2	4.49
2. Commits to position in forensic case before examining person, record, or facts	4.67	87.1	4.8	3.2	4.52
3. Reports marijuana usage to prison officials despite promise of confidentiality	4.58	90.3	6.4	0	4.40
4. Does not personally examine defendant in death penalty case, yet gives opinion	4.49	79.0	9.7	6.4	4.42
5. Does not continually clarify forensic role to defendant who misunderstands it	4.40	83.9	8.1	3.2	4.14
6. Does not respect competent prisoner's right to refuse psychiatric treatment when the prisoner does not meet state's criteria for civil commitment	4.38	77.4	8.1	8.1	4.18
7. Writes seclusion order solely to support prison discipline	4.37	77.4	9.7	8.1	4.12
8. Sees no duty to protect *both* defendant and society in a forensic case regardless of who pays fee	4.20	66.1	14.5	12.9	3.30
9. Specifically recommends death penalty verdict	4.17	67.7	16.1	12.9	4.36
10. Expresses opinion on legal issues without attempting to ascertain legal criteria	4.12	77.4	17.7	1.6	3.91
11. Performs forensic evaluation without attempting to obtain significant material	4.09	75.8	16.1	4.8	3.62
12. Tells only a portion of the truth on the witness stand despite oath	4.05	74.1	17.7	1.6	3.85
13. Expresses opinion on legal criteria amounting to a death penalty recommendation	3.89	53.2	19.3	21.0	4.03
14. Sees a need to treat death penalty differently because of its special seriousness (opinion)	3.86	58.1	20.1	14.5	4.03

Table 3
Respondents' Perceptions of Issues with Little Agreement or Perceived Not to Represent Ethical Problems

Issue	AAFS				Tri-State AAPL Rating
	Rating	Ethical Problem			
		% Yes	% No	% No Opinion	
1. Performs a forensic evaluation on a patient or former patient in a major forensic case with the patient's consent (AAPL Guideline)	2.04	14.5	71.0	9.7	2.27
2. Evaluates a prisoner's competency to be executed	2.52	24.2	56.4	14.5	3.06
3. Treats a prisoner to restore competency to be executed	2.86	37.1	42.2	16.1	3.21
4. Becomes an advocate for an opinion originally reached in an impartial manner by voluntarily revealing only those facts which help "his side" and by coaching the attorney about what questions not to ask	3.19	46.8	40.3	8.1	3.13

the images of figures from the past and consciously or unconsciously transfer feelings associated with them onto the present evaluator." Therefore, simple warnings or explanations are insufficient. Section 4, Annotation 6 is pertinent insofar as it refers to the need to describe the nature, purpose, and lack of confidentiality of a forensic examination at an evaluation's beginning. In addition, the survey results recommended continuing vigilance, also included by AAPL in its guidelines in Section III on Consent.

In reference to the death penalty, item 4, Table 2, shows concern regarding the ethics of giving opinions in a death penalty case without a personal examination of the defendant. Despite the Supreme Court's contrary view in the *Barefoot* case,[15] this aspect produced the largest consensus on the death penalty issue. Apparently, in this situation, forensic psychiatrists wish to set their own ethical standards rather than defer to the courts, even the Supreme Court, on matters of professional ethics. The APA ethical guidelines already make distinctions in this area and thereby have made personal examination requirements dependent on the specific circumstances, providing ample precedent for such distinctions.

Personal examinations are required by the APA in Section 7, Annotation 4: "The psychiatrist may permit his/her

certification to be used in the involuntary treatment of any person only following his/her personal examination of that person." Section 7, Annotation 3 declares it unethical for a psychiatrist to offer an opinion about an individual in the light of public contention unless he has concluded an examination and has been granted proper authorization for the statement. AAPL's *Ethical Guidelines*[1] discourage making child custody recommendations about a parent without a personal examination but do not forbid them if the limitations of one's opinion are stated.

In contrast, Opinion 7A of the APA Ethics Committee considers it ethical for a psychiatrist to testify for the state in a criminal case about the competency of a defendant, based on criminal records, without examining the defendant or obtaining approval to render an opinion. Opinion 4E claims it ethical for a forensic psychiatrist to draw up a speculative psychological profile of a mass murderer to help identify him since that is not representative of anyone the forensic psychiatrist knows.

It certainly would appear strange if involuntary hospitalization required a personal examination yet a death penalty examination did not so require. Moreover, item 14, Table 2 shows agreement that the death penalty should be treated differently because of its special seriousness. Our profession need not alter our ethics merely for the convenience of problematic legal procedures in a few states. Although the U.S. Supreme Court can decide in the *Barefoot* decision[15] that a procedure is legal, only the psychiatric profession can decide whether it is ethical, according to the new definition of forensic psychiatry.[11]

In other death penalty facets, items 9 and 13 in Table 2 indicate opposition to recommending the death penalty specifically or to expressing an opinion on a state's legal criteria virtually amounting to such a recommendation. In contrast, item 2, Table 3 shows that a slight majority of AAFS respondents do not believe it raises ethical problems to evaluate a prisoner's competency to be executed; however, a difference of opinion was found among Tri-State respondents. A difference of opinion was found in both groups regarding the ethics of treating someone to restore his competency to be executed. Neither of these issues appears, therefore, to produce a large enough consensus to warrant an ethical guideline. Clear distinctions in the responses thus appeared among the various death penalty facets.

Relevant to the death penalty issue is *Principles* Section 1, "a physician shall be dedicated to providing competent medical service with compassion and respect for human dignity." *Annotation* 4, Section 1, is the requirement not to be "a participant in a legally authorized execution," also found in this survey's Table 1, item 10. To date, however, this Annotation has received a narrow interpretation to mean only the actual killing. Opinion 1C, however, is potentially broader, stating, "the overriding meaning of this principle is that the physician-psychiatrist is a healer, not a killer, no matter how well-purposed the killing may be." Respondents apparently wish

this section to be broadened to include some other death penalty facets. However, they do not require an inquiry into distant ends, as shown by considering it to represent no ethical problem if traditional psychiatric and forensic psychiatric roles indirectly resulted in an execution. AAPL's current ethical guidelines make no reference at all to death penalty matters.

Items 10 and 11 in Table 2 refer to the lack of any attempt to obtain relevant materials or any attempt to ascertain relevant legal criteria prior to expressing an opinion on a legal issue. These items, also included in the prior survey,[8] could be considered under Principle 2 which refers to the necessity to provide competent medical service. Items 10 and 11, Table 2, both require merely the *attempt* to provide competent forensic psychiatric service. Perhaps an Annotation is needed to refer to competent forensic service. AAPL's ethical guidelines make no other reference to these issues at this time.

The items of the "hired gun" and "advocacy" referred to in items 1, 2, and 12, Table 2, and item 4 in Table 3, remain important controversial issues. Their presence at the top of this list and as the highest concern shown about the "hired gun" in the prior survey, demonstrate the significance of this issue. The "hired gun" problem is reflected partially in AAPL's *Ethical Guidelines*[1] in the commentary on impartiality and objectivity, but is not so labeled. Misrepresenting a portion of the data (item 1, Table 2) is included in the AAFS *Code of Ethics*.[16] It is referred to only indirectly in AAPL's *Ethical Guidelines* in the Impartiality and Objectivity Section.

Respondents additionally consider it an ethical problem to show bias by committing to a position before examining the person, record, or facts. From the survey's responses, it represents a significant problem for a "hired gun" to present the best case possible for one side, ignoring his honest opinion. The "hired gun" appears to confuse his role with that of the lawyer who is expected to make a one-sided case on behalf of his client and takes *no* oath to "tell the truth, the whole truth and nothing but the truth."

However, as explained by Diamond,[17] there is no such thing as a totally unbiased expert. If he actually begins unbiased, the adversary process will soon change that. According to Stone,[3] however, the "hired gun" really could not be legitimized until the judge would instruct the jury to keep in mind when weighing the expert testimony that forensic psychiatrists are ethically required to be biased. Eliminating the oath to tell the whole truth would be necessary. Gutheil and Appelbaum[14] suggest the "honest expert is selling a set of skills, a way of analyzing the problem at hand, and the means of presenting this analysis in court," not an opinion. He should reach his opinion by exercising the relevant skills impartially. It may be impossible to be totally unbiased, but it should be attempted during an evaluation. A retainer in advance may help. If the psychiatrist reaches the witness stand, it should imply that "his opinion fits the expectation of those who are paying

his fee." Nevertheless, "hypotheticals should be answered honestly even if doing so would seem to weaken the case he is supporting." Sometimes such honesty can actually help "his side" by making the expert seem credible. The "hired gun" remains an important problem insofar as it is difficult to distinguish between honest unavoidable biases of those who differ with us and bias motivated by a potential fee or other personal considerations. Moreover, insofar as this issue is one which does not fall readily within the APA framework, it may be unenforceable currently and merely a standard for good forensic practice unless the distortion is sufficiently severe to come in conflict with APA Principle 2, which refers to competent medical service. Alternatively, AAPL could develop a forensic annotation to Principle 2 referring to competent forensic psychiatric service which endeavors to preclude the "hired gun."

Item 4, Table 3 indicates a difference of opinion regarding becoming an advocate for an opinion originally reached in an impartial manner by voluntarily revealing only those facts which help "his side" and by coaching the attorney about what questions not to ask. AAPL's new ethical guidelines permit advocacy for an opinion in the Impartiality and Objectivity section after an impartial opinion has been reached. The possibility of ever being able to be impartial or objective is controversial. The Supreme Court in the Ake decision[18] recognized the legitimacy of the psychiatrist offering adversarial assistance, including advising the attorney regarding evaluation, preparation, and presentation of the insanity defense, as well as cross-examination. Diamond's procedure[17] is to try to reach a totally honest opinion and honest presentation of that opinion regardless of his admitted biases. If this honest opinion conflicts with his open pro-defense biases in criminal cases. then he will refuse to participate. His biases appear to operate primarily at the early phases insofar as they motivate him to explore possible defenses and their strategies, in his decision whether to participate, and in the late phases when he becomes an advocate for his opinion. He considers himself to be functioning in a fiduciary relationship to the legal system. In his opinion and testimony he strives to be completely honest even if such honesty would not help his side.[19] He takes the presence of bias in all forensic psychiatrists as a given. He favors advocacy but insists that it be honest. The degree of honesty required ethically is controversial. Diamond would propose totally honest participation. Others would permit half-truths which are self-serving and leave it to cross examination to bring out the rest.

Item 10, Table 2 refers to the perception of a duty to protect *both* the defendant and society regardless of who pays the fee. The implications from the Tri-State responses and also the clear AAFS responses provide further evidence that forensic psychiatrists do not totally wish to give up traditional medical values dating back to Hippocrates when they don the cloak of the forensic psychiatrist. They apparently wish to consider such values and balance them against

other considerations rather than as absolute values in any rigid sense. They also appear to reject any simplistic solutions in which the psychiatrist gives up all traditional medical values when he consults with the court and is not in a doctor-patient relationship.

Although the results of the survey show that respondents believe certain actions present ethical problems, it is important to note that many respondents may have meant that caution should be exercised because of competing and sometimes conflicting ethical values and concerns. They are not necessarily recommending ethical sanctions. Opinions regarding specific ethical guidelines in these areas would need another survey, perhaps of AAPL members regarding possible additional ethical guidelines.

Since the survey included two forensic organizations, it is not necessarily representative of all psychiatrists in the forensic arena. Moreover, the differing response rates make the AAFS results much more representative than those from Tri-State AAPL. However, the strikingly similar results from two significant groups show some generalizability. Contrary to some stereotypes, forensic psychiatrists demonstrate both awareness and concern about ethical issues. Critics need to be apprised of forensic psychiatrists' sincere interest in the ethics of their profession.

This survey has the advantage of supplying some data regarding the opinions of forensic psychiatrists about some frequently unresolvable ethical debates. Obviously, ethical issues should not be decided merely by majority vote. The majority can be wrong or misinformed. Numbers do not determine truth. The needs of a respectable minority must also be considered. Mere majority rule can be tyrannical without respect for minorities. However, ethical guidelines also should not reflect merely the views of an influential vocal minority. Somehow, they should include the majority's concerns. It is certainly relevant at least to know the majority opinion. Ethical problems, likewise, should not be settled merely by arbitrary definitions.

Most "controversial" issues can be included within the APA ethical framework. AAPL's sections on Confidentiality and Consent readily can be interpreted within the APA framework. The existing AAPL Section IV on Impartiality and Objectivity may require changes, but there is nothing in the APA framework to preclude the "hired gun" at the present time unless the APA Section Principle 2 is expanded by additional annotations to include competent forensic psychiatric service as competent medical service. AAPL would do well to clarify this issue, considering the concern about the "hired gun."[7] The survey's findings on the lack of an attempt to ascertain relevant legal criteria or to obtain relevant materials also does not fit readily into the APA framework. Moreover, the AAPL Section V on qualifications and the AAFS requirement not to distort data[16] both received strong support as referring to ethical problems in this survey but do not readily fit into the APA framework. The necessity not to distort data does not even appear in

the current AAPL guidelines. These issues also would require expansion of the meaning of competent medical service in order to fit within the APA framework.

AAPL should include these issues as Annotations or Opinions and should encourage the APA to adopt such expansions. If the APA does not include these issues, AAPL would need to develop its own procedures for enforcing its guidelines. The new items not currently part of the AAPL guidelines need to be included in some form. If AAPL wishes the APA to provide the enforcement mechanism, active translation of the AAPL guidelines into APA format is crucial. In that way, AAPL could have clearer input and potential influence regarding ethics violations cases. Otherwise AAPL's ethical guidelines will indicate merely opinions regarding good forensic psychiatric practice but will not directly have any teeth or possibility of sanctions. According to Dyer's terminology[13] we will have ethics in the upward perspective but not in the downward perspective. The upward perspective would solely serve the purpose of stating ethical aspirations for good practice, but there would be no downward perspective for the purpose of sanctioning.

An important finding in this survey is that most included issues previously considered "controversial" appear to produce a significant consensus. Therefore, many if not most of these issues warrant inclusion in guidelines. Respondents also appear to wish to retain traditional Hippocratic medical values or at least view them as an important consideration in their functioning as forensic psychiatrists. At minimum, they appear to feel responsible for the direct consequences of their actions. Conflicting values are inevitable and often may require balancing as described in detail by Hundert.[20] Hopefully, this survey's data will provide an impetus towards resolving otherwise interminable ethical debates and impasses, and will provide support for efforts to address these ethical problems in some manner in the ethical guidelines of forensic psychiatry.

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