## Letters to the Editor

Only letters that are responsive to articles published in previous issues of the *Journal* will be accepted. Authors of these published articles are encouraged to respond to the comments of letter writers. The Editorial Board hopes that this section will enhance the educational mandate of the *Journal*.

Editor:

Thank you for publishing "Prearraignment Forensic Evaluations: Toward a New Policy" (Steven A. Ornish *et al.*, 24:453–70, 1996). The APA Ethics Committee, at its meeting on February 17–19, 1996, after deliberating on a request for clarification of Section 4, Annotation 13, of *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*, rendered the following report (Minutes, p. 12):

> The committee studied the material provided and noted that the American Academy of Psychiatry and the Law has asked its ethics committee to study this issue and will keep the APA Ethics Committee informed.
>
> At the present time, it is the view of the APA Ethics Committee that Section 4, Annotation 13 continues to be interpreted to apply to prearraignment interviews. The committee is not prepared to consider changing its interpretation nor it is convinced that a change in the annotation is necessary at this time. However, as with any of the annotations, the committee remains open to new information, input, and considerations.

Address letters to: Seymour L. Halleck, MD, Editor-in-Chief, Journal of the American Academy of Psychiatry and the Law, Department of Psychiatry, University of North Carolina, CB 7160, Medical School Wing D, Chapel Hill, NC 27514.

Publication of the article by Steven A. Ornish *et al.*, and the responses you have encouraged your readers to submit, will provide the APA Ethics Committee with precisely the information it is seeking as it further considers the important matter of prearraignment psychiatric evaluations of arrestees.

I believe that the APA Ethics Committee should not only reject the recommendation that Annotation 13 of Section 4 of *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* be removed from the Code, but indeed strengthen it by issuing a formal Opinion elaborating on its meaning and purpose.

I feel the article constitutes yet another attempt to erode our ethical code. The article quotes Chief Justice Rehnquist: "Indeed, the Fifth Amendment privilege is not concerned with moral and psychological pressures to confess emanating from sources other than official coercion" (pp. 460, 461); and, essentially based on that sweeping statement, argues that prearraignment psychiatric examinations should be declared ethical. It overlooks the fact that the APA Ethics Committee is concerned, and should be, with moral and psychological pressures to confess. The Ethics Committee is not beholden to the "judiciary, including the U.S. Supreme Court" and therefore should not be charged, as the authors blatantly charge (p. 469), with circumventing rulings by the courts.

The article states that "In the guise of ethics, the committee members who originated this code have imposed apparently personal and political views on all mem-

bers of respective professional organizations . . ." (p. 469). On the contrary, the drafters of Section 4, Annotation 13, placed fundamental human rights above narrowly construed constitutional rights. Just as legal rights are, as pointed out by the article, "created by legislators and interpreted by the courts, not ethics committees" (p. 460), so are ethics committees, not legislators, empowered to recommend to their governing bodies a code of ethics. Clearly, codes of ethics and ethical guidelines are created by the learned professions (including the legal profession), not by legislators, and are interpreted by the professional societies, not by the courts. Reevaluating and reformulating the positions of the AMA, AAPL, and APA "in the light of recent rulings and current and past law," as recommended in the article (p. 461), would unquestionably grease the slippery slope that could lead to the weakening, if not virtual destruction, of our code of ethics.

As with the AMA's current stand on psychiatrist participation in capital punishment, the position advocated by the authors rests on the fallacious notion that "Psychiatrists operate outside the medical framework when they enter the forensic realm, and the ethical principles by which their behavior is justified are simply not the same" (p. 463); that is to say, "Their functioning in a forensic setting is guided by a different set of principles."

The authors of the article believe that Annotation 13 of Section 4 was only superficially considered by various components of the APA and AAPL. In this, they have been sadly misinformed. I was a member of the APA Committee on Psychiatry and the Law when the activities of forensic psychiatrists in San Diego (and elsewhere) came to light. Reference to this was made in my article on "Use and Misuse of Psychiatry in Competency Examination of Criminal Defendants" (A. L. Halpern, Psychiatr Ann 5:123–50, 1975, at 148), and the history of the events leading to the creation of Annotation 13 was subsequently comprehensively and brilliantly presented by Melvin G. Goldzband, MD, in his article titled "Pre-arraignment Psychiatric Examinations and Criminal Responsibility—A Personal Odyssey Through the Law and Psychiatry West of the Pecos" (J Law Psychiatry 4:447–66, 1976). It was on October 17, 1974, at a meeting of the APA Committee on Psychiatry and the Law in Washington, DC, that the elements of Annotation 13 were first advanced and thoroughly discussed.

From the very beginning "access to counsel" was considered to mean "that the defendant has not only had access to counsel, but that counsel knows of the examination—including its time and place and the identity of the examination psychiatrist—and has agreed that the examination may proceed." The deliberations of the APA Committee on Psychiatry and the Law and the APA Ethics Committee led to the inclusion of Annotation 13 of Section 4 in *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* (1981 ed.). When this issue was again very carefully reviewed by the AAPL Ethics Committee, it was considered crucial, because of the increasing tendency of juvenile courts to remand adolescent defendants to (adult) criminal courts, that the Annota-

tion should not be limited to the psychiatric evaluation of "adult" defendants, and the wording should be changed to "person." Thus, AAPL's *Ethical Guidelines for the Practice of Forensic Psychiatry*, developed by the AAPL Ethics Committee, approved by the Executive Council of AAPL in October, 1986, and ratified by the membership in May, 1987, states: "With regard to any person charged with criminal acts, ethical considerations preclude forensic evaluation prior to access to, or availability of legal counsel. The only exception is an examination for the purpose of rendering emergency medical care and treatment."

Section 4, Annotation 13, again was considered by the APA Ethics Committee prior to the change in wording from "adult" to "person" as contained in *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* (1991 ed.). I reiterate that all the APA and AAPL components that considered this matter, fully aware of judicial approval of forensic practices in Southern California and elsewhere, but believing that *fundamental human rights* were at stake, understood "access to counsel" to mean that the defendant's lawyer knows of the examination and has agreed that the examination may proceed. (Incidentally, the forensic psychiatrists I met with at the Serbsky Institute in Moscow in 1988 showed strong interest in Annotation 13 and expressed the wish that their ethical code contained a similar canon.)

I think it is grossly misleading to link the Annotation to the wording of the preamble of Section 4, as the Ornish *et al.* Article does (p. 453). The Annotation was meant to stand alone, but it could be fitted into the Code only by including it in one of the Sections. Section 4 seemed to be the least unrelated to the issue, so it was chosen. In retrospect, perhaps Section 7 (titled "A physician shall recognize a responsibility to participate in activities contributing to an improved community") would have been a more appropriate place for the Annotation.

I believe it is imperative that *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* retain Annotation 13 of Section 4 exactly as it is presently written. As mentioned above, it may be desirable for the APA Ethics Committee to publish an Opinion in the next edition of *Opinions of the Ethics Committee on the Principles of Medical Ethics* containing precisely the words so strongly objected by Ornish *et al.*: "'Access to counsel' means that the defendant has not only had access to counsel, but that counsel knows of the examination—including the time and place and the identity of the examining psychiatrist—and has agreed that the examination may proceed."

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Editor:

It is vitally important that "Prearraignment Forensic Evaluations: Toward a New Policy" (S. A. Ornish *et al.*, 24:453–70, 1996) was published, for it opened a dialogue for obtaining new information

and considerations to be provided the APA Ethics Committee regarding the special nature of prearraignment psychiatric evaluation of arrestees. I would like to submit some ideas on the issues raised by the Authors.

The article states that a "core" issue is that in the "forensic arena . . . no physician-patient relationship exists and healing is not the purpose." Although many ways have been suggested to describe a "physician-patient relationship," it must be clear to all that such a description only answers the question of whether one exists, not how it comes about or whether, outside of the "liability arena," such a relationship is indispensable to a professional relationship between a physician and a non-physician. Moreover, if "healing" could only be offered to "patients" through a doctor-patient relationship, there would be no arena for medical publishing, teaching or consultations of various kinds.

I hold that although a doctor-patient relationship is indispensable to a healing process for a sick individual, it is not the totality of ethical roles physicians *qua* physicians can play in society, and that there can be and are many different professional relationships between physicians and nonphysicians that need not lead to that of "doctor-patient." What is indispensable to these other relationships, too, is that one of the parties is a licensed physician acting within the scope of his or her license to practice medicine, and the other party knows of that level of societally accorded expertise and wishes to make use of it. What is essential for the existence of physicians, in all situations, though, is that the relationship struck is an ethical one. Involvement of physicians in prearraignment forensic evaluations, and before advice by counsel, is not one of them since such a relationship is solely that between a physician, acting as an agent of the state, and an accused, who cannot give less-than-coerced consent.

The Authors describe "two roles," that of "forensic evaluator in advancing truth" and that of "healer in treating," and look to support from various sources. For example: (1) Professor Appelbaum: "Psychiatrists operate outside the medical framework when they enter the forensic realm, and the ethical principles by which their behavior is justified are simply not the same" (p. 463); (2) The APA: which purportedly acknowledges the two roles since in an *amicus curiæ brief it stated that psychiatrists performing sanity and competency examinations "are acting outside of their traditional therapeutic roles" (Id.)*; (3) Chief Justice Rehnquist: "Indeed, the Fifth Amendment privilege is not concerned with moral and psychological pressures to confess emanating from sources other than official coercion" (p. 461).

Doctor Appelbaum's statement is offered as little more than an *ipse dixit* we are expected to absorb without questioning whether it has any relevance to an ethical issue. It purports to dispense with that as unnecessary, since he asserts that in the forensic arena, the psychiatrist somehow disappears and a forensic evaluator emerges. Little mention is made regarding how and why the psychiatrist was allowed into that arena in the first place. Is there any possibility that the psychiatrist would be able to be a fact witness if he or she were not licensed as a *psychiatrist*? Or would the

state have called such a doctor in to testify at all if the jury or the judge were told that the doctor's ethics were left "outside" the courtroom door?

The APA *amicus* statement is also of no help to the Authors. The fact that it is universally known that physicians "traditional[ly]" act therapeutically does neither describe all that physicians do nor all that society knows about them, solely their "traditional" role. Even if it is conceded that "psychiatrists operated outside of the medical framework when they enter the forensic realm," it would only place the psychiatric physician squarely within the ambit of acting as an agent of "official coercion" and thus conforms precisely with a violation of the arrestee's Fifth Amendment privilege, according to the admonishment enunciated by the Chief Justice. However, it cannot be conceded that the forensic psychiatrist in such situations is acting outside of the "realm" of psychiatry since that realm was established for psychiatrists, and now, others, not for "forencisists."*

Nor is only the profession's ethical concerns at issue. Society, too, is sensitive to the privity of the doctor-prisoner relationship. Interestingly enough, the Constitutional rights of examiners are protected under Rule 35 of the Federal Rules of Civil Procedure. A "suitably licensed or certified examiner" may examine the party ordered "on good cause shown" to submit to the examination. However, there is no legal requirement that the *examiner* be ordered to produce the examination report. The only orders the courts may make are for the party in question. And, although an examiner performs the examination, if he "fails or refuses to make a report the court may exclude the examiner's testimony if offered at trial."† Such sensitivity to the rights of examiners reveals, especially in mental examinations, the inner nature of the privacy rights in a psychotherapist-patient relationship. Aspects of the examination may reveal that either the party in custody is malingering or lying, in which case the physician would know immediately that the indictment and trial are foreseeable events with the examination being the decisive factor, or that the party is, indeed, incompetent. If the rights of persons and examiners are protected under the "Civil Rules" is any less ethical behavior allowed to be a concern of an examination in an alleged criminal situation? This is the slippery slope as it relates to acting by "inclination," as Kant would

* Rule 35 of the Federal Rules of Civil Procedure requires physical or mental examinations to be conducted by any person who is suitably licensed or certified was revised by Congress in 1988 to extend the performance of mental examinations to licensed clinical psychologists and "other certified or licensed professionals, such as dentists or occupational therapists, who are not physicians or clinical psychologists, but who may be well-qualified to give valuable testimony about the physical or mental condition that is the subject of dispute." F.R. Civ. Proc., Rule 35, Advisory Committee's Note. The term *suitably* licensed is new to encourage the court to exercise discretion to *order* examinations whereas in the past the court's discretion was to refuse or restrict examinations. *See* 1 James W. Moore *et al.*, Moore's Federal Practice ¶ 35.2[2] (1995) (citing 8 Wright & Miller, Federal Practice & Procedure § 2234 (1986 Supp.)). Note further that the "valuable testimony . . . that is the subject of dispute" could only arise *after* an arrestee has been able to be advised by counsel since before that, the "dispute" is purely one-sided.

† Fed. R. Civ. p. 35 (b)(1).

have it,[‡] rather than out of *duty*, that is, whether it is a moral act or a personal one.[§]

The arguments about relative "harm" done seem to only refer to the prisoner, and thus miss the ethical point that the harm is done to the moral fabric of our civilization. But I guess that is increasingly common in Medicine as it culminates the 20th Century with analogous considerations of "cost" versus "healing."

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Editor:

I have just finished "Prearraignment Forensic Evaluations: Toward a New Policy," by Steven A. Ornish, MD *et al.* Please count me among those who strongly agree with the opinions of the authors.

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***Reply:***

Editor:

> If we cannot find the truth, what is our hope of justice? [1]

We appreciate Schoenholtz and Halpern's acknowledgement that our paper has opened a dialogue with the APA Ethics Committee. Just as in other ethical controversies in medicine, Kirkland's letter illustrates that there are a range of legitimate views on a complex moral, philosophical, and legal topic. We respect our colleagues whose personal political beliefs have led them to make a choice not to do prearraignment evaluations (or to practice forensic psychiatry). No one is suggesting that forensic psychiatrists, who are opposed in principle to performing prearraignment evaluations, be compelled to do so. Yet, we are concerned that with this issue, Weinstock's caveat regarding the politics of ethics has gone unheeded:

> Large majorities are especially persuasive, but it remains important in developing ethical guidelines not to neglect the views of legitimate minorities and not to allow ethics to be determined solely by majority vote. [2]

Schoenholtz argues that the boundaries delimiting a forensic psychiatrist from a treating psychiatrist are illusory. Dietz

[‡] Immanuel Kant, Metaphysical Foundations of Morals 143 (1785): To be beneficent when we can is a duty; . . . [b]ut I maintain that in such a case, however proper, however amiable an action of this kind may be, it nevertheless has no true moral worth, but is on a level with other inclinations; e.g. the inclination to honor which, if it is happily directed to that which is actually of public utility and accordant with duty and consequently honorable, deserves praise and encouragement but not respect. For the maxim lacks the moral ingredient that such actions be done *out of duty*, not from inclination.

[§] Well before Kant, Shakespeare, too, "had a word for it"; that is, the inclination and not the duty to perform the devilish deed:

[Romeo, bribing the Apothecary to obtain the poison with which to kill himself]:

Apothecary: My poverty, but not my will, consents.

Romeo: I pay thy poverty and not thy will.—*Romeo and Juliet*, Act V, Scene I (New York: Collins & Hannay, 1824) (with thanks to A. L. Halpern, MD)

suggests an alternative approach for thinking about the respective ethics of these different roles:

> [T]he most fundamental distinction between clinical and forensic psychiatry is the absence of a doctor-patient relationship in the latter. The clinical psychiatrist has a duty to the patient that conflicts with the forensic psychiatrist's duty to the truth . . . Many apparent moral conflicts dissolve if you resolve yourself that the proper role of the forensic psychiatrist is the same as that of any other forensic scientist. My touchstone for grappling with apparent moral conflicts has always been to ask myself what the ideal forensic pathologist would do in a similar situation. The ideal forensic pathologist would not care a whit about what a more senior colleague might think, about being called to testify in a high profile trial, or about whether the law offends personal values; and when acting as forensic psychiatrists, neither should we. My conception of our role is that it is the same as that for any other group of forensic scientists who are called upon to give evidence about technical matters. [3]

We feel it is important to consider in context Halpern's position against prearraignment evaluations. In his other writings, Halpern advocates not only the elimination of competency evaluations, but also the abolishment of the insanity defense, viewing both as unethical, "because it makes a mockery of the criminal justice system in the US because it fails to identify those who are truly disabled and squanders the scarce resources on those who are not mentally ill." [4] Without abandoning 270 years of case law, [5] prearraignment evaluations permit accurate identification of those who are truly mentally ill.

The February 1996 minutes of the APA Ethics Committee, as referenced by Halpern, stating that the code on prearraignment evaluations "continues to be interpreted to apply to prearraignment interviews" is tautological and does not answer the specific question posed by Ornish to the committee as to *how* it is to be applied. Halpern states that, "From the very beginning, 'access to counsel' was considered to mean that defense counsel has given approval for the examination." Halpern's definition of "access to counsel" is novel and at variance with the law. As we stated in our paper, since the meaning of the code was less than self-evident to many, the San Diego Psychiatric Society drafted its own protocol permitting prearraignment evaluations. We do not object to an explicit definition of the phrase "access to counsel" as suggested by Halpern; if there is to be such a code, clarity is preferable to ambiguity.

Both Halpern's and Schoenholtz's view is predicated on the premise that prearraignment evaluations are "harmful" to individuals and to society. There is no scientific or anecdotal evidence that prearraignment evaluations have ever psychologically harmed anyone, and neither Schoenholtz nor Halpern give examples to the contrary. Halpern is also misinformed about the nature and purpose of prearraignment evaluations. Prearraignment evaluations answer the question whether a psychiatric disorder was a factor in a crime, not who committed the crime. A prearraignment evaluation is not the emotional coercion or seduction of a suspect into a confession by the forensic psychiatrist. Rather, it is the exact same procedure (and answers the same forensic questions) as a post-arraignment forensic psychiatric evaluation and generally only performed after the suspect has con-

fessed. As a safeguard, the prearraignment evaluation protocol of the San Diego Psychiatric Society required that the suspect to have confessed prior to the forensic psychiatric interview.

As we clearly stated in our paper, since coercive pre- or post-arraignment forensic psychiatric interviews have the potential to harm the individual, we concur that such evaluations are unethical. If defense counsel has concerns that the prearraignment evaluation was coercive, then a motion *en limine* excluding the "fruits" of the interview can be made. Videotaping or audiotaping the interview serves as an additional safeguard. We believe that the judge, as a neutral party, is in a much better position to assess for coercion than defense counsel, whose obligation is to prevent conviction regardless of culpability.

Halpern charges that our paper "constitutes yet another attempt to erode our ethical code" and "would unquestionably grease the slippery slope that could lead to the weakening, if not virtual destruction, or our code of ethics." Halpern also intimates that forensic psychiatrists in the former Soviet Union expressed the wish that their ethical code contained a similar canon. We feel that such statements are an erroneous attempt to portray us as nihilists and designed to create fear and innuendo that prearraignment evaluations will lead to the kinds of abuses of psychiatry as seen in the former Soviet Union. We consider this hyperbole and antithetic to the spirit of debate and moral evolution. As eloquently stated by Angell, Executive Editor of The New England Journal of Medicine, "It is impossible to avoid slippery slopes in medicine (or any aspect of life). The issue is how and where to find purchase . . . Unfortunately, no human endeavor is immune to abuses." [6]

Halpern states that we are "sadly misinformed" that Annotation 13, Section 4 was superficially considered by various components of the APA and AAPL. Nowhere in our paper do we state (or imply) that the code was superficially considered, only that the minutes from the meetings have not been discoverable and the arguments justifying the code against prearraignment evaluations have been disparate and changing.

Halpern cites his article, "Use and Misuse of Psychiatry and Competency Examination of Criminal Defendants." We appreciate Halpern bringing this article to our attention, and did not reference it in our paper, since the focus of his article was competency (not prearraignment) evaluations. Writes Halpern: "This is frequently the case [that no defense attorney is involved in competency and prearraignment evaluations] . . . despite the right to 'assistance of Counsel' embodied in the Constitution by the Sixth Amendment over 183 years ago . . . " [7] Halpern's article supports our thesis that prearraignment evaluations are a Sixth Amendment issue.

Halpern makes the point that the APA Ethics Committee is not beholden to the judiciary and should not be charged with circumventing rulings by the courts. "Circumvent" means "to overcome by artful maneuvering." [8] To argue, as Halpern does, that the APA Ethics Committee should not be "blatantly" charged with

circumventing the law does not comport with the facts. It was only after courts rejected Halpern's (and other members') interpretation of Constitutional law, did the "activists-oriented members" of the Ethics Committee (as described by Goldzband) [9] draft the instant code on a very esoteric point of law.

It is precisely because the APA Ethics Committee is not "beholden to the judiciary" that it has been successful in coercing its members to follow it's edicts rather than the rulings of the court. It seems inconsistent that Halpern argues for the sovereignty of the APA Ethics Committee relative to the law, yet advocates a system in which it is the defense attorney's approval for the forensic psychiatric interview that defines the forensic psychiatrist's behavior as ethical.

Moreover, there is precedent for ethics committees being "beholden" to the courts, as exemplified by informed consent doctrine, abortion, and physician advertising. Informed consent doctrine was a duty first defined by the courts and subsequently incorporated into medical ethics. [10] It was only after the Federal Trade Commission ordered the American Medical Association to cease imposing restraints on advertising, subsequently upheld by the courts, that the American Medical Association dropped its ethics restriction on physician advertising. [11] And despite the strong convictions that some physicians hold that abortion is unethical, no professional medical organization has drafted an ethical code contravening the U.S. Supreme Court's ruling in *Roe v. Wade*. [12]

Halpern writes, "[T]he drafters of Section 4, Annotation 13, placed fundamental human rights above narrowly construed constitutional rights." Halpern does not indicate which "fundamental human right" he feels is being violated by prearraignment evaluations. We believe this argument trivializes the enormity of human rights abuses such as slavery, torture, and persecution based on political or religious beliefs. We are also unaware of any documented cases cited in the literature of abuse or coercion that occurred during a prearraignment evaluation. Furthermore, Article 19 of the Universal Declaration of Human Rights [13] also states that "Everyone has the right to freedom of opinion and expression," a value that this code does not promote in its members. It is disturbing that Halpern and Schoenholtz would so readily coerce psychiatrists (under the threat of having their reputations damaged and careers destroyed by being labeled "unethical") to ignore the law and follow their *Weltanshauung*.

Halpern states that it is "grossly misleading to link the Annotation to the wording of the preamble of Section 4 . . . ." The linkage was not ours, since annotation 13 (on prearraignment evaluations) is listed under section 4.

Halpern states that the preamble of Section 4, "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 . . .," was chosen because it was the "least unrelated to the issue [of prearraignment evaluations]" and writes that in "retrospect" it should have been placed under Section 7: "A

physician shall recognize a responsibility to participate in activities contributing to an improved community." We would agree that prearraignment evaluations are inappropriately linked to physician-patient rights for the reasons enumerated in our paper. Furthermore, annotation 1 of section 7 also states: "Psychiatrists are encouraged to serve society by advising and consulting with the . . . judiciary branches of government." We believe that the benefits of prearraignment evaluations to suspects with legitimate psychiatric defenses, and to the community by averting the ubiquitous, reverse-engineered, bogus, psychiatric defenses, outweigh the potential for abuse.

Schoenholtz references the philosophy of Kant. Kant would define autonomy "as the courage to think for oneself and not rely on socially given rules and dogmas." [14] For issues in which there are a range of ethically acceptable views (as we believe this one is), attempts for committee members to impose their own ideology onto others by drafting ethical rules to dictate behavior potentially leads to despotism and does not foster the moral freedom of its members. There is also a high risk for an ethics committee to abuse its power and become a "one-party" system in which its members are appointed based on similar political views shared with the established members. Tolerance is the basis for all human rights, and the notion that a professional aspires to follow his or her own moral compass, when reasonable, is a value, instead of obedience, which should be promoted by professional societies.

Schoenholtz mentions that our reference to Appelbaum's statement that "psychiatrists operate outside the medical framework when they enter the forensic realm, and the ethical principles by which their behavior is justified are simply not the same," is an *ipse dixit*. The AMA Code of Medical Ethics also clearly delimits the doctor-patient relationship from the forensic consultant/defendant relationship. For example, the AMA's Code of Medical Ethics explicitly permits a physician to testify "as to relevant medical evidence during trial" and "as to medical aspects of aggravating or mitigating circumstances during the penalty phase of a capital case," [15] even though such testimony may be damaging to the defense and ultimately lead to the execution of the defendant. The AMA's Code of Medical Ethics also permits a forensic psychiatrist to examine a prisoner for competency to be executed, although adds that a physician should not be compelled to provide medical testimony as it relates to legal competency, if it is contrary to the physician's personal beliefs. [16] It is only when the physician participates in the administration of the lethal injection, which falls within the ambit of practicing medicine, does the doctor-patient relationship attach. We believe that these codes serve as precedents for delimiting the doctor-patient relationship from the forensic consultant-examinee relationship and, by extension, permit prearraignment evaluations.

Schoenholtz makes the point that since forensic psychiatrists are allowed into the forensic arena because of their training as clinical psychiatrists, traditional medical ethics applies. The AMA Code of Medical Ethics states that, "As a citizen and as a professional with special training and

experience, the physician has an ethical obligation to assist in the administration of justice." [17] We believe that prearraignment evaluations fulfills the psychiatrist's obligation as a citizen and as an authority to assist in this area.

Schoenholtz avers that there are other levels of "healing" in our society other than that offered to "patients" in a doctor-patient relationship, a notion that we do not dispute. Schoenholtz asserts that prearraignment evaluations cause "harm" "to the moral fabric of our civilization." What of the "harm" to the moral fabric of our society from injustice if all of the illegitimate psychiatric defenses were successful? We would also add to Schoenholtz's list the "healing" that occurs to individual suspects when his or her insanity is credibly identified and leads to appropriate psychiatric care rather than incarceration, as well as the "healing" that occurs to society (and to the victim) when truth is advanced and justice served as a result of the findings of the prearraignment evaluation.

Schoenholtz cites the Federal Rules of Civil Procedure, which are inapposite to criminal proceedings. Nevertheless, the intent behind Rule 35 was not to protect the "Constitutional rights of examiners" or "sensitivity to . . . the inner nature of the privacy rights in a psychotherapist-patient relationship" as suggested by Schoenholtz. Rather, Rule 35, which requires that a forensic psychiatric report be submitted prior to such expert giving testimony, is a reciprocal discovery issue drafted so that both sides are prepared at the time of trial to avoid discovery (and potential delays) during trial. Court-ordered examiners are generally chosen from a panel of psychiatrists and psychologists who have requested to be named to it. If the examiner refuses to produce a report, it is likely that he or she would be dropped from the panel and could, perhaps, even be found in contempt of court.

We share Schoenholtz's concerns about managed care (which the APA has been an active proponent of) [18] and would submit that the conflicts of interests created for physicians whose economic well-being is dependent on providing less care is the greatest single ethical threat to the doctor-patient relationship.

We enjoyed Schoenholtz's quotations from Shakespeare and would like to conclude with a quote from the same source:

> This above all: to thine ownself be true,
> And it must follow, as the night the day,
> Thou canst not then be false to any man.
> —*Hamlet*, Act I, Scene 3

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