

Commentary: 1982 Was AAPL's Year of Living Dangerously

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In 1982, the American Academy of Psychiatry and the Law (AAPL) was a growing and ambitious professional organization. Its membership was a small but vigorous group united by the desire to develop the emerging psychiatric subspecialty of forensic psychiatry within the larger context of psychiatry. The organization was 13 years old. It was devoted to the goal of uplifting the practice of forensic psychiatry in the United States through continuing education and specialty training. AAPL was well positioned to achieve its goal. Its leaders were fairly single-minded and many were strategically placed within the hierarchy of the American Psychiatric Association. Subspecialty recognition within psychiatry and medicine appeared attainable. Then came the *United States v. Hinckley* case. Every aspect of the case was controversial: the facts of the case itself, the use of the insanity defense, the contradictory psychiatric testimony and, finally, the verdict. Forensic psychiatry was put on the defensive, and at the height of the controversy the former President of the American Psychiatric Association and the nation's most prominent Professor of Law and Psychiatry delivered a simple luncheon speech. As is evident from this article and from this edition of the *Journal*, now, some 25 years later, we are still talking about what he had to say.

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Our task in this commentary is to set the historical and cultural context of Dr. Alan Stone's 1982 speech to the Thirteenth Annual Meeting of the American Academy of Psychiatry and the Law (AAPL). It is not possible to place Stone's speech in an historical context without exploring the case of John Hinckley, Jr. On March 30, 1981, Hinckley shot and wounded President Ronald Reagan; Reagan's Press Secretary, James Brady; a Secret Service agent, Timothy McCarthy; and a police officer, Thomas Delahanty. Mr. Hinckley was found not guilty by reason of insanity in a Washington, D.C., court on June 21, 1982.¹ From the time of the shooting, to the time of the verdict and, for that matter to the present day, this case has had a profound influence on the insanity defense and on forensic psychiatry.

At the time of Stone's address, AAPL had been functioning as an organization only since 1969. Jonas R. Rappeport, MD, was the organization's first president and in 1982, its medical director. Alan A. Stone, MD, was the 108th President of the American Psychiatric Association (APA), serving in that office from 1979 to 1980. Four months after the *Hinckley*

verdict, on October 22, 1982, Stone delivered his speech, "The Ethics of Forensic Psychiatry." At the time of his address, Stone was, as he is today, Professor of Law and Psychiatry at Harvard Law School.

The *Hinckley* verdict; Stone, both as a person and as a representative of the venerable APA, the leading professional psychiatric organization; and the AAPL, a young organization seeking to develop itself as the premier professional organization in the burgeoning field of forensic psychiatry are the underpinnings of this commentary.

The Reaction to the *Hinckley* Verdict

Strong opinion about the insanity defense was quick to surface after the verdict. National Public Radio Legal Correspondent Nina Totenburg reported that after sitting in the courtroom for the entire case, she was shocked by the outcome: "The verdict makes sense to me in terms of the law. As a citizen, the law doesn't make much sense to me."² An ABC News poll conducted for the "Nightline" television program showed that an overwhelming majority of Americans thought justice had not been done.³ A *New York Post* headline declared succinctly, "Hinckley Beats Rap."⁴

Immediate concerns were related to the damage done to the law by the verdict and to the public's

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perception of the criminal justice system. Richard Cohen, writing in *The Washington Post*, stated that the insanity defense made the law look like a “fool.”⁵ In the same newspaper, George F. Will noted that “the verdict will serve the social good only if it generates disgust with the incompatible marriage of psychiatry and law.”⁶ His editorial colleague, William Raspberry, was less direct in his comments but was aware that damage may have been done: “Probably the greatest harm done by a successful insanity plea is to the public perception of justice.”⁷ Bob Wiedrich of *The Chicago Tribune* stated that the trial stood as proof that the “American Justice System has been intellectually corrupted and needs a purgative.”⁸

On the other side of the argument, Coleman McCarthy of *The Washington Post* supported the trial’s verdict and expressed concern about the “permanent damage” a guilty verdict would have had on the future rights of “all the mentally ill.”⁹ *The New York Times* defended the right of an individual to pursue a verdict based on an insanity plea despite the public, Congressional, and Reagan administration’s outcry against the verdict, which included Treasury Secretary Donald Regan’s assertion that Hinckley got off “scot-free.” A series of four editorials in *The New York Times* from June 23, 1982, to July 6, 1983, discussed the wisdom of keeping the insanity defense, albeit with changes to its form, as well as recommendations to define further the role of psychiatrists in the courtroom. *The Los Angeles Times* editorial board acknowledged the public outcry over the verdict but advised that “two significant facts must be kept in mind, (1) the Jury applied the law as it is; (2) the verdict does not set Hinckley free.”¹⁰ *The Chicago Tribune* editorial board, its reasoning tempered by the fact that insanity was used as a defense in only a small percentage of cases, stated that “the fear that animates public outrage about [the insanity plea] is grounded more in symbolism than in practical consequences.”¹¹

Taking a broader perspective, Judy Mann wrote in *The Washington Post* that we are a “country of laws and order where justice is synonymous with reasonable doubt, mercy and compassion” and that the jury’s verdict was proof of that.¹² In an editorial entitled, “Wait for the furor to die,” Andy Rooney expressed outrage that it might appear that a potential presidential assassin got off on a legal technicality but encouraged patience in light of our anger: “The judicial system that seemed to work for him [Hinck-

ley] was really working for us” and served as “evidence of the high state of our civilization.”¹³ *The Economist* also cautioned against abolishing the insanity defense, stating that abolition was “hardly possible in a humane society.”¹⁴ A clear and succinct proposal to review the insanity defense was published in *The Washington Post*, with the recommendation that it be “compassionate, informed and hard-headed.”¹⁵

There were also editorial comments regarding the role of psychiatrists in the courtroom. *The Chicago Tribune* editorial board lamented that each expert gave the jury “sharply different conclusions” while “riding his own psychological hobbyhorse.”¹⁶ Within days of the verdict, Russell Baker and Tom Wicker, both writing in *The New York Times*, chastised the expert psychiatric witnesses for their “contradictory” roles in the case. Baker openly wondered about the validity of psychiatric diagnosis: “If psychiatrists can’t agree about whether you’re a lunatic or not, who can?”¹⁷ Wicker directed his comments more toward the power of psychiatrists on the witness stand and how psychiatrists might manipulate jurors. He thought it appropriate that the psychiatrist give his or her opinion, as just that: “For their own credibility, they at least owe jurors a clear declaration that they offer not certainty but only their best professional opinion.”¹⁸ *The New York Times* Editorial Board stated that it was incumbent on psychiatric expert witnesses to “use their expertise to help jurors, not to tyrannize them.”^{19,20}

Reacting to the public furor (and following the lead of the American Psychiatric Association,²¹) the American Bar Association (ABA)²² and the American Medical Association²³ set about to develop position statements regarding the insanity defense and the role of psychiatrists in criminal court proceedings. The APA and the ABA recommended the retention of the insanity defense, and each made suggestions advocating restrictions on the defense and on psychiatric involvement. The AMA took a separate path and recommended the abolition of the insanity defense in a position that was a harbinger of what later became the verdict of guilty but mentally ill.²⁴ In 1984, following the recommendations of these organizations, the United States Congress passed a law that effectively eliminated the volitional prong of the American Law Institute test and made the insanity defense an affirmative defense. Ten years later, after the initial furor had calmed, Steadman *et*

*al.*²⁵ chronicled the changes following the *Hinckley* verdict on a state-by-state basis.

But, we get ahead of ourselves in this commentary. Remember that Stone's APPL address occurred only months after the *Hinckley* verdict at what was the height of the public and media reaction, at a time when professional organization reviews of the insanity defense and the design of research projects were in their formative stages. As we shall see below, the *Hinckley* verdict added to the tension that existed between organized psychiatry and forensic psychiatry, as forensic psychiatry struggled for recognition as a legitimate and recognized subspecialty of psychiatry.

AAPL: The Organization

AAPL was founded in 1969 by a small group of psychiatrists from different backgrounds, all devoted to the advancement of the field of forensic psychiatry. The founders came from court clinics, academic settings, private practice, and correctional settings. They saw forensic psychiatry as a growing specialty and felt that many practitioners were coming to this field without proper educational preparation. Membership in the organization was, by its charter, limited to psychiatrists who were also APA members, and AAPL's stated purpose was focused singly on education in the field of forensic psychiatry. To accomplish its educational mission, AAPL established an annual meeting devoted to furthering the field of forensic psychiatry by providing educational experiences at the basic and advanced levels of this growing field, and by publishing a scientific journal, the *Bulletin of the American Academy of Psychiatry and the Law*, devoted to promoting an exchange of ideas in forensic psychiatry and encouraging the publication of empirical research in the field.

As AAPL grew in the 1970s, the leaders of the organization took several important steps to expand the field by supporting the development of an increased number of forensic psychiatric fellowship training programs and by raising the standards for the forensic practitioner by developing a program for the accreditation of individual forensic psychiatrists. When AAPL was founded, there already were several well-recognized post-residency fellowship programs in forensic psychiatry. Under AAPL's umbrella, the directors of forensic psychiatry fellowship programs were organized into a functional committee, with goals that included the development of standards for

accreditation of forensic fellowships and the stimulation of new fellowship programs. As mentioned, the AAPL leadership also realized that recognition as a subspecialty of psychiatry would require a process of certifying the accreditation of forensic psychiatrists. To this end, the organization sponsored the development of the American Board of Forensic Psychiatry (ABFP), which issued its first certificate in 1979. At the time of its inception, the ABFP leadership agreed that the organization would cease operation when the American Board of Medical Specialists and American Board of Psychiatry and Neurology (ABPN) formally recognized forensic psychiatry as a subspecialty of psychiatry. This eventually happened, and ABPN issued its first certificates for Added Qualifications in Forensic Psychiatry in 1994.

But in 1982, the year of Stone's address, AAPL's goals had not yet been reached. It was true that interest had grown in forensic psychiatry and that AAPL had continued to gain members, but the organizational efforts to move toward recognition of forensic psychiatry as an officially recognized subspecialty of psychiatry were far from realized. As a matter of fact, following the *Hinckley* verdict in 1982, this AAPL goal seemed to be at risk.

Antecedents to Stone's AAPL Address

Stone was born in Boston in 1929. According to Onesti,²⁶ Stone was appointed Professor of Law and Psychiatry at Harvard in 1969. His appointment could not have come at a more turbulent time in the relationship between law and psychiatry, and in 1975 he published *Mental Health and Law: A System in Transition*,²⁷ in which he addressed the important mental health-law interactions of the day. His work on civil commitment was crucial to the APA's eventual formulation of a model civil commitment code that was innovative, but sadly, not put into practice. In 1979, at the beginning of his presidential year, Stone, building on the work of Aaron Lazare, stated that psychiatry had entered

... an era of pragmatic eclecticism. We have at least four paradigms, at least four scientific languages, and many dialects. Psychiatry is in ferment. It is experiencing a vital, fertile eclecticism. Unfortunately, eclecticism does not capture the imagination or inspire wonder in the populace; when you run it up the flagpole, no one salutes [Ref. 28, p 1020].

In the same article Stone pointed to the threats to psychiatry coming from the law, warning about the

increased focus on criminal justice standards in the arena of civil commitment.²⁸ From the perspective of the current day, what Stone predicted as a threat has become reality.

The theme of competing paradigms continued one year later in Stone's APA Presidential Address and certainly formed the basis of his 1982 AAPL address. But, in his APA Presidential Address, Stone took us to a personal level not apparent one year earlier. He related "The Parable of the Black Sergeant,"²⁹ in which he, as an Army psychiatrist, testified in a military court and in which he felt that "something terrible happened" in the courtroom. As Stone related, the sergeant worked in an army supply department and was accused of theft when a large amount of property was found in his home. At trial, a defense psychiatrist stated that the sergeant had kleptomania. Stone, as an army employee, was called on to evaluate the sergeant and, not withstanding proper warnings to him about confidentiality, the defendant told the evaluating psychiatrist his whole story. It was Stone's opinion that the sergeant did not have kleptomania or any other mental disorder that precluded responsibility. The result of Stone's testimony was that the sergeant was found guilty and was sentenced to five years of hard labor. Stone stated: "As you may have guessed, I was the Army psychiatrist, and I felt something terrible happened that day. Each time my mind takes me back to that occasion I have a sense of dismay that will not be dissipated" (Ref. 29, p 888).

It is not difficult to see how this parable fits into the larger theme of Stone's APA Presidential Address of "Conceptual Ambiguity and Morality in Modern Psychiatry."²⁹ The conceptual ambiguity described in the speech refers to psychiatry's approach to racism, homosexuality, and women's issues, and how psychiatric diagnosis can add confusion to already ambiguous situations. Morality comes into play in regard to each of the issues in the address, but in the case of the black sergeant it is clear that for Stone the punishment was far out of proportion to the crime, and that the psychiatrist (himself) had inordinate power in the decision. If Stone had only agreed with the defense psychiatrist and said the magic word "kleptomania," the whole case would presumably have had a different outcome. One can imagine that Stone was convinced that had he agreed with the diagnosis of kleptomania, the sergeant would have been reprimanded and sent for treatment. His career

might have been blemished but would not have ended in such a final and punitive manner. This parable and the larger issues explored in these presidential addresses were important antecedents of Stone's 1982 AAPL address.

And Then There Was Dr. James Grigson

Grigson was a psychiatrist in Dallas, Texas, who had testified for the prosecution in well over 100 Texas death penalty cases, resulting in a spasm of attempts by the APA to combat the negative effects of Grigson's actions. Discussion about Grigson figured prominently in Stone's AAPL address, and although it is not our task here to speculate as to why, it is not too difficult to see connections and implications between the "Parable of the Black Sergeant" and discussion of Grigson's testimony in the many cases in which his opinions contributed significantly to the imposition of the death sentence in Texas courtrooms. However, for this commentary, it is also important to note that in 1982 Grigson figured prominently in another major event of that time, the restoration of the death penalty and the omnipresent forensic psychiatric concern: the prediction of long-term dangerousness. Every forensic psychiatrist and most general psychiatrists knew of Grigson's predictions of dangerousness based almost exclusively on the diagnosis of antisocial personality. Most of psychiatry and the informed lay public strongly disapproved of his approach. The APA and its leaders through its official actions, *amicus* briefs, and public comments, condemned Grigson loudly and often. He was embarrassing, to say the least, to all of organized psychiatry and contributed to the negative public view of psychiatry in the courtroom and to the reputation of psychiatry in general. Remember Stone's earlier quoted comment that "psychiatry is in ferment."²⁸

Discussion

In his 1979 speech, and after discussing APA's earlier foray into judicial action, Stone said the following about the law: "But law works like a ratchet: once the handle is turned, it cannot be turned back. The camel's nose is in the tent. We have to learn to live with lawyers and our legal efforts must continue" (Ref. 28, p 1021). Stone was talking about the influence of law on the practice of psychiatry, not on the relationship of forensic psychiatry to general psychi-

atry. However, it is not hard to understand that, in the early 1980s, forensic psychiatry was viewed by many in the psychiatric establishment as being an embarrassment to the profession and as having a negative effect on the profession at a time when psychiatry itself was in “ferment.”

This was the backdrop to the issues brought to the fore by *Hinckley*. Look at the bare facts of the case: A young man, in full view of the media and TV cameras shot four people: the President of the United States, his Press Secretary, and two law enforcement officers. All were seriously wounded. There was no mystery about who did the act; everyone saw it on television. At the highly publicized and lengthy trial, the defense relied on an insanity defense, generally misunderstood as a tactic to get a client “off.” The trial was highly visible and exhibited the so-called “battle of the experts” to the whole country. The battling experts had impressive credentials as befitted the seriousness of the trial, but appeared to be vigorously partisan. The final blow was that the defendant was acquitted, found not guilty.

In 1982, AAPL was a growing, successful organization with ambitious goals. The original restriction of membership to psychiatrists who were also APA members proved to be very strategic, in that many of the psychiatrists serving on the APA’s Council on Law and Psychiatry, on the Judicial Action Commission, and in other key APA positions were AAPL members who were very active in the AAPL organizational hierarchy. Soon after the verdict, the APA felt that it was important to act quickly and decisively in organizing a task force charged with developing a position paper on the insanity defense.²¹ The organization appointed a broad, respected panel of psychiatric leadership charged with examining all aspects of the insanity defense. The chair of the task force, Dr. Loren Roth, was a senior member of both the APA and AAPL. The task force produced a position paper that was developed quickly and efficiently. More importantly, the paper ultimately was successful in bringing balance back to the discussion of where the insanity defense fit into the criminal law, of the role of psychiatry in the implementation of the defense, and of the important question of the disposition of those mentally ill individuals after a successful insanity defense.

The bringing of some intellectual balance to the insanity defense debate came later and may have served to calm some of the troubled waters that existed within and outside of organized psychiatry re-

garding the *Hinckley* verdict. But, when Stone delivered his AAPL address, the emotions were still running high, and he may not have been jesting when he said that: “Now, after *Hinckley*, when forensic psychiatrists need encouragement, healing balms, and soothing treatment, I have come down from my ivory tower to ‘shoot the wounded’ ” (Ref. 30, p 209). The stage had been set for the speech. Stone, the person and the former APA president, came to rein in the troops, while the troops were concerned with recovery from recent setbacks and moving the agenda forward. They were hoping for “encouragement, healing balms, and soothing treatment.” That is not exactly what they got. Here stood the APA, in the person of its former president and the most prominent proponent of the importance of the relationship between law and the practice of psychiatry and care of the mentally ill, speaking before a now successfully launched organization of forensic psychiatrists delivering a message that might be summarized as: “we applaud you on an intellectual level, but remain highly suspicious of you on the practitioner level.”

References

1. United States v. Hinckley, 672 F.2d 115, 132 (D.C. Cir. 1982)
2. MacNeil/Lehrer Report, June 22, 1982
3. ABC News poll. Public Opin Q 47:202–12, 1982
4. The New York Post, June 22, 1982, as cited in Mann J: Justice. The Washington Post. June 23, 1982, p B1
5. Cohen R: Either/or. The Washington Post. June 24, 1982, p C1
6. Will G: Insanity and success. The Washington Post. June 23, 1982, p A27
7. Raspberry W: Verdict: guilty—and insane. The Washington Post. June 25, 1982, p A31
8. Wiedrich B: Demand for a saner system. The Chicago Tribune. August 1, 1982, p A5
9. McCarthy C: The Hinckley verdict was right. The Washington Post. June 26, 1982, p A17
10. Editorial Board: Hinckley and the law. The Los Angeles Times. June 23, 1982, p C6
11. Editorial Board: The future of the insanity defense. The Chicago Tribune. June 23, 1982, p A14
12. Mann J: Justice. The Washington Post. June 23, 1982, p B1
13. Rooney A: Wait for the furor to die. The Chicago Tribune. June 29, 1982, p A11
14. Editorial Board: Insanity of the law. The Economist (U.S. edition). June 26, 1982, p 23
15. Editorial Board: Revising the insanity defense. The Washington Post. September 14, 1982, p A18
16. Editorial Board: The future of the insanity defense. The Chicago Tribune. June 23, 1982, p A14
17. Baker R: Observer; Shrinking from justice. The New York Times. June 23, 1982. Available at <http://query.nytimes.com/gst/fullpage.html?sec=health&res=9A03E6D6143BF930A15755C0A964948260&scp=1&sq=observer%3B+shrinking+from+justice&st=nyt/>. Accessed on March 23, 2008
18. Wicker T: In the nation; after the Hinckley case. The New York Times. June 25, 1982. Available at <http://query.nytimes.com/gst/>

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- fullpage.html?sec=health&res=9804E3DB153BF936A15755C0A964948260&scp=1&sq=in+the+nation%3B+after+the+hinckley+case&st=nyt/. Accessed on March 23, 2008
19. Editorial Board: Killers can be crazy. *The New York Times*. June 23, 1982. Available at <http://query.nytimes.com/gst/fullpage.html?sec=health&res=9A0CE4D6143BF930A15755C0A964948260&scp=1&sq=killers+can+be+crazy&st=nyt/>. Accessed on March 23, 2008
 20. Editorial Board: A sane view of insanity. *The New York Times*. January 28, 1983. Available at <http://query.nytimes.com/gst/fullpage.html?sec=health&res=9B02E7DA1F38F93BA15752C0A965948260&scp=1&sq=as+sane+view+of+insanity&st=nyt/>. Accessed on March 23, 2008
 21. American Psychiatric Association Work Group on the Insanity Defense: Statement on the Insanity Defense. *Am J Psychiatry* 140:681–8, 1983
 22. Standing Committee on Association Standards for Criminal Justice: Criminal justice and mental health standards. Chicago: American Bar Association, 1984
 23. The insanity defense in criminal trials and limitations of psychiatric testimony. *JAMA* 251:2967–81, 1984
 24. Associated Press: Medical association urges insanity defense be ended. *The New York Times*. December 7, 1983, p B8
 25. Steadman HJ, McGreevy MA, Morrisey JP *et al*: Before and After Hinckley: Evaluating Insanity Defense Reform. New York: The Guilford Press, 1993
 26. Onesti SJ; Alan A Stone MD. One Hundred and Eighth President, 1979–80. *Am J Psychiatry* 137:895–9, 1980
 27. Stone AA: Mental Health and Law: A System in Transition. Rockville, MD: NIMH, 1975
 28. Stone AA: Response to the Presidential Address. *Am J Psychiatry* 136:1020–2, 1979
 29. Stone AA: Conceptual Ambiguity and Mortality in Modern Psychiatry. APA Presidential Address. *Am J Psychiatry* 137:887–91, 1980
 30. Stone AA: The ethical boundaries of forensic psychiatry: a view from the ivory tower. *Bull Am Acad Psychiatry Law* 12:209–18, 1984