

# Now Is the Time for AAPL to Demonstrate Leadership by Advocating Positions of Social Importance

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The American Academy of Psychiatry and the Law (AAPL) and other medical organizations have not taken a position on the abolition of capital punishment because of a long-standing tradition of remaining neutral on “nonmedical” societal issues that are highly divisive. It is the authors’ contention that taking a stand on vital social issues that are clearly in the public interest is wholly consistent with the stated purposes of AAPL and that the time has come for an open and frank discussion by the membership on the merits of altering its policy, with particular focus on eliminating the death penalty. The present article explains why capital punishment can no longer be considered a nonmedical societal issue and why AAPL must awaken to take on controversial matters such as this one. For AAPL to continue to avoid this debate and silence any attempt to organize opposition to the current *status quo* will only serve to embolden those who argue in favor of the death penalty. Such continued silence betrays any notion of neutrality and is an abdication of the canons of medical ethics we have all sworn to uphold.

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The American Academy of Psychiatry and the Law (AAPL), up to now, has taken the position that it should remain neutral on matters that are considered nonmedical, highly divisive issues of society at large. The problem of taking such a stance has come into clearer focus since AAPL started to debate whether to assert official opposition to execution as a punishment in America’s justice system. Our outgoing President parsed the nonbinding referendum on this question to AAPL membership by claiming that, “It was clear from examining the actual return of the referendum that there was no clear consensus by the members as to what our position should be” (Ref. 1, p 4).

With almost 60 percent of the AAPL members who participated in the referendum voting in favor of opposing capital punishment, clearly a consensus of opposition, albeit not overwhelming, is there. The actual uncomfortable question remaining is: where

would taking a position lead us next? As an educational organization, what should we do with other potentially divisive issues of social importance, such as abortion, or immigration, or nuclear energy, for that matter?

A number of members, including those who oppose capital punishment, are concerned that AAPL will stir up dissension in the ranks by taking such positions, and that doing so will somehow label members as biased in certain court proceedings. Some members further believe that such statements will have no impact on these great debates but will instead result in loss of membership by championing causes far removed from the day-in and day-out work that has brought us all together in the first place. These concerns are reasonable, and so we will review the impact such advocacy might have on our organizational structure and will use the current debate over capital punishment to illustrate why it is time for AAPL to take a stand on those issues of social importance that affect our practice and the well-being of those whom we serve.

At the outset, we should mention that opposition to capital punishment is exactly the type of debate in

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which AAPL should take a position. As experts in service to the furtherance of justice, is it not reasonable to believe that we might have an informed opinion on this punishment? Clearly those issues that have no direct or indirect connection with the practice of medicine, and, in particular, the practice of forensic psychiatry, should not usually be given venue for potentially rancorous debate within AAPL. On the other hand, if a vocal minority of membership wants such debate, there should be a means for AAPL to hear their proposals and then defer them, if warranted, since actions can evolve over time. This is the purpose of deliberative review within the parliamentary procedures of a membership society. Indeed, such debates may reveal where our parliamentary procedures need refinement. Gaps within our deliberative rules most certainly do not imply that AAPL is incapable of debate at all.

The real threat to AAPL and other medical societies is the growing trend to avoid debate on these subjects altogether. Certainly, it is important to prevent erosion of membership, but this is not a reasonable excuse to shirk opportunities to take a stand on matters that affect the lives of us all. People do listen to psychiatrists, and it is surprising that such a reminder is needed for this particular readership. The outright cynicism displayed in the *AAPL Newsletter* and at our Annual Meetings over the capital punishment argument is reprehensible, not because defenders of capital punishment are being forced to acknowledge that their profession can never endorse their opinion; it is reprehensible because the expediency engendered by denying a right to such debates shows just how far our profession is falling from its core ethics.

When we hear leadership claim that our deliberative process will be overwhelmed by a divisive debate detracting us from our primary educational goals, we should actually be questioning whether it is the leadership itself that is failing us. Apparently, that which is too divisive in psychiatry was perfectly acceptable for lawyers to take up through the American Bar Association (ABA), as they did in 1997 (discussed later).

The debate itself is not what is threatening to AAPL. It is instead this request to argue whether or not members have the right to debate at all. The near 60 percent of our membership who responded to the survey support issuing a statement calling for abolition of capital punishment, but rather than viewing

this as a call to action, we are witnessing further obstructionism and fear-mongering behind this false debate over debate. Why? Could it be that, though taking a stand on abolition is unpopular to up to 40 percent of our membership, when looking at the merits of the real debate over capital punishment, those who support legal executions are standing on *terra infirma*?

We acknowledge that while many AAPL members view capital punishment as immoral and uncivilized, others with like sincerity and zeal believe that there are crimes so vile and heinous as to merit nothing less than the death penalty. Nevertheless, having adopted the codes of medical ethics of the American Psychiatric Association (APA) and the American Medical Association (AMA), which prohibit participation by physicians in legally authorized executions, AAPL's neutrality is seriously challenged when methods of execution are used that open the door to physician involvement. Such is the case when the method is by lethal injection, as currently practiced in almost all U.S. death penalty jurisdictions.

A study of the procedures used in lethal-injection executions has revealed that physicians participate directly, especially to end the life of the condemned prisoner when the execution is botched by nonphysicians.<sup>2</sup> Laws and regulations providing for physician participation facilitate the direct involvement of doctors who, even when they are not aware of the canon of ethics against participation, follow what they regard as a higher duty to obey the law. By shielding physician participation from severe professional sanctions, these laws suggest that the state can justify ignoring our medical ethics and then co-opt or even coerce physician involvement, which stains our profession but serves the state.

Since no other workable options have been devised to protect our medical ethics, nothing less than abolition of capital punishment can end the unethical participation by physicians in executions.<sup>3</sup> Especially because physician involvement in capital punishment continues, AAPL's current position of silence cannot be labeled neutral. In fact, such silence might as well be a ringing endorsement of legal execution and physician participation.

AAPL members, more than other physicians, are aware of the numerous reversals of conviction because of serious error such as incompetent defense counsel and prosecutorial and police misconduct. They know that former prosecutor and famed author

Scott Turow, on the basis of the findings of the Illinois commission on which he served, has become an opponent of capital punishment, concluding that the administration of the death penalty is bankrupt beyond repair.<sup>4</sup> AAPL members know that the popular commentator and discredited former Los Angeles police officer, Mark Furman, was an ardent supporter of the death penalty, but has also become an abolitionist on the basis of his recent study of the creation of false evidence and the withholding of exculpatory evidence by prosecutors and crime laboratory technicians in Oklahoma.<sup>5</sup> Throughout the United States, investigations of capital cases in recent years have revealed considerable evidence of prosecutorial and juror misconduct, of actual innocence, of racial inequities, of false testimony, and of ineffective assistance of counsel,<sup>6</sup> let alone police brutality and torture.<sup>7</sup>

In 1997, the American Bar Association decried the racially discriminatory application of the death penalty, the grossly inadequate legal representation of low-income defendants, and the restrictions on appeals to the federal courts even in cases in which new evidence is presented that points to the innocence of the condemned prisoner. That professional organization concluded that the death penalty is “a haphazard maze of unfair practices with no internal consistency,” and called for a moratorium on executions.<sup>8</sup>

It is now incontrovertible that no system can be developed that is free from error and can ensure that an innocent person is not put to death. The time has come for the ABA to move from moratorium to abolition. A declaration by AAPL in this regard, already supported by a significant, albeit not universal, majority (59%) of the respondents in a nonbinding mail referendum conducted by AAPL last year,<sup>1</sup> could well be the catalyst for the ABA to move to a call for abolition.

Taking a stand on vital social issues that are clearly in the public interest is wholly consistent with the stated purpose of AAPL as outlined in the Academy's Bylaws (Article II, § 2). Those who claim otherwise, if allowed to succeed in stifling these issues in our collective work, will diminish the strength of AAPL's advocacy on not only these matters but also on those subjects that have universal backing of membership. Moreover, those who champion doing nothing may be quite content with their position, but some of us look at such nonaction as a clear betrayal of the Hippocratic Oath and, as such, it can never be labeled a

neutral position. We can live with AAPL's not issuing a call for the abolition of capital punishment at this juncture if it has been given a reasonable hearing, but it is impossible to do so if we are robbed of our right to dissent.

A very recent development makes a call by AAPL, APA, and AMA for abolition of the death penalty particularly urgent. The Supreme Court in October 2003,<sup>9</sup> in a unanimous decision denying a writ of certiorari, let stand the 6:5 ruling<sup>10</sup> by the United States Court of Appeals for the Eighth Circuit authorizing the use of forced medication to restore competency to be executed. Such “treatment” by psychiatrists would clearly cross the medical ethics’ “prohibition line.”<sup>11</sup> A practice that every physician knows is unethical will have been given short shrift by this Court and the government, and potentially now by our own AAPL, when mentally ill death row inmates start to be executed after being restored to competency through our actions.

The AMA's time-honored and high-sounding canon (adopted by AAPL and APA) against physicians' participating in executions can avoid being rendered meaningless only by an unequivocal pronouncement by these organizations against the death penalty itself. Especially because AAPL is organized as an educational society, it must become a deliberative body that weighs in on matters of social import to guide and encourage membership and those who have need of our services to understand that there is an ethical core to our profession. To be neutral when such stands will be labeled political is to forget the very mission of our responsibilities as physicians to our communities.

If a motion is made for AAPL to take a position, is it so difficult to devote some time to considering the proposal? What are we really talking about here? When we blankly cut our vocal cords whenever AAPL is asked to consider taking a stand on contentious issues, abdication of responsibility will herald the true beginning of the end of AAPL's standing for the correct application of psychiatry within the law. It is time for our organization to accept the mantle of leadership within society that we possess as experts of psychiatry and the law.

## References

1. O'Shaughnessy RJ: AAPL's response to social issues. AAPL Newsletter 28(3):4-7, 2003
2. Denno DW: When legislatures delegate death: the troubling par-

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- adox behind state uses of electrocution and lethal injection and what it says about us. *Ohio St Law J* 63:63–260, 2002
3. Halpern AL, Freedman AM: Participation by physicians in legal executions in the USA: an update. *Curr Opin Psychiatry* 15: 605–9, 2002
  4. Turov S: *Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty*. New York: Farrar, Straus & Giroux, 2003
  5. Furman M: *Death and Justice: An Exposé of Oklahoma's Death Row Machine*. New York: HarperCollins Publishers, 2003
  6. Post L: On their own. *Natl Law J* Dec. 1, 1, 14, 15, 2003
  7. Gray M: *The Death Game: Capital Punishment and the Luck of the Draw*. Monroe, ME: Common Courage Press, 2003, pp 128–39
  8. American Bar Association. Back-up Report for ABA Death Penalty Moratorium Resolution. Adopted by the ABA House of Delegates on 3 February 1997
  9. *Singleton v. Norris*, 124 S.Ct. 74 (2003)
  10. *Singleton v. Norris*, 319 F.3d 1018 (8th Cir. 2003)
  11. Zonana H: Competency to be executed and forced medication: *Singleton v. Norris*. *J Am Acad Psychiatry Law* 31:372–6, 2003