

AAPL Advocacy Through Education

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There's a time for debate and a time for consensus. There's a time for advocacy and time for first principles.

Hon. Judge Anthony Kennedy¹

Advocacy is important in psychiatric practice. In the United States, the Accreditation Council of Graduate Medical Education (ACGME) requires general psychiatry residents to become proficient in advocacy by promoting emotional wellness, obviating mental disorders, and supporting “quality patient care and optimal patient care systems” before they complete training (Ref. 2, pp 16–17). Residents can refine their advocacy skills by educating patients and their families about psychiatric disorders, treatment, and relapse prevention; collaborating to reduce barriers to patients’ accessing health care services; and encouraging others to engage in activities that are conducive to achieving a reasonable work-life balance.

Organized medicine also offers ways for psychiatrists to engage in advocacy. Some professional organizations offer education and research programs as well as opportunities to develop policies and programs that promote quality medical care. Many medical groups have affiliated political action committees (PACs) that serve as lobbyists and agencies through which psychiatrists can advocate for legislative changes that support various goals, such as increasing the availability of inpatient psychiatric beds; suicide prevention; funding for medical education; and other changes that are conducive to safe, comprehensive psychiatric practice.

How does an organization like the American Academy of Psychiatry and the Law (AAPL) fit into the mental health advocacy paradigm? AAPL pro-

vides its members educational programs through its Annual Meeting, its Forensic Psychiatry Review Course, and its publications, which include *The Journal*, *the AAPL Newsletter*, ethics guidelines and practice resources, and activities for Maintenance of Certification. These tools, which help forensic psychiatrists expand and refine their skillsets, advance the profession.

Psychiatrists can support forensic psychiatry research and education resources by donating to the AAPL Institute for Education and Research. In addition, AAPL members advocate for the profession in the media and with the public by describing the interrelationship between mental health and legal matters. AAPL members also advocate for the opinions that they have dispassionately rendered in reports, during depositions, and in courtroom testimony.

The founding members of AAPL were cognizant of the importance of mental health advocacy. This is reflected in AAPL’s membership requirements. Each AAPL member must also be a member of the American Psychiatric Association (APA), the Canadian Psychiatric Association (CPA), or the American Academy of Child and Adolescent Psychiatry (AACAP). AAPL also encourages its members to join the American Medical Association (AMA) to ensure that forensic psychiatry is represented in the AMA House of Delegates. AAPL members have served in leadership and governance roles in these organizations, including as Presidents of AMA, APA, and CPA.

AAPL should not retain lobbyists or support PACs because this contradicts its educational mission. AAPL members may choose to support the lobbying efforts of other medical professional organizations, however, provided they do not attribute their support to AAPL. Members may also advocate for health care matters by communicating directly with their legislators.

Forensic psychiatrists are in an excellent position to advocate for the profession. Our understanding of

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safe psychiatric practice, harm avoidance, litigation reduction, and the implications of mental health policy as well as our experience in testifying make us qualified to do so. We accomplish this in many ways.

The APA, which represents the interests of more than 38,000 psychiatrists, is an important vehicle for psychiatry advocacy. The APA Assembly deliberates on policies, position statements, and other matters that inform psychiatric practice and the public image of the profession. AAPL appoints one Representative to the APA Assembly, and this Representative's actions are predicated on AAPL's educational mission. AAPL's Representative, like other Assembly delegates, is assigned to serve on Assembly Committees. I was privileged to represent AAPL in the Assembly last year, and I served on the Rules Committee, the Maintenance of Certification Committee, and the Assembly Committee of Representatives of Subspecialties and Sections (ACROSS), which represents the subspecialty interests of more than 14,500 psychiatrists.

The AAPL Assembly Representative testifies about matters salient to the safe and ethical practice of forensic, clinical, research, and administrative psychiatry. On one occasion, the Assembly debated whether psychiatrists should be permitted to treat hypertension in their patients who have barriers to accessing primary care services. As AAPL's representative, I testified on the Assembly floor about scope of practice, including the potential liability implications of the proposed expansion of practice. The proposal was defeated, although Assembly decisions do not always align with testimony from an AAPL representative.

AAPL's past Assembly representatives have testified about more contentious topics, including firearms background checks, restricting access to firearms, educating patients about safer firearms storage, and smart guns. AAPL representatives also have participated in deliberations about juvenile solitary confinement, suicide prevention, and Maintenance of Certification. The dispassionate approach of the Assembly representatives' testimony has earned AAPL a reputation for proffering thoughtful and informed opinions that sometimes are requested by other Assembly delegates when complex proposals are being deliberated.

Fourteen AAPL members represent their regions or district branches in the APA Assembly. Although they serve to advocate for the professional interests of

Table 1 Councils of the American Psychiatric Association

Council on Addiction Psychiatry
Council on Advocacy and Government Relations
Council on Children, Adolescents, and Their Families
Council on Communications
Council on Consultation-Liaison Psychiatry
Council on Geriatric Psychiatry
Council on Healthcare Systems and Financing
Council on International Psychiatry
Council on Medical Education and Lifelong Learning
Council on Minority Mental Health and Health Disparities
Council on Psychiatry and Law
Council on Quality Care
Council on Research

From Reference 3.

their constituents, including the needs of patients, their testimony is informed by their understanding of and experiences in forensic psychiatry. At times, Assembly delegates will preface testimony by stating that they represent their home state and are also AAPL members, especially when an action paper has potential medical-legal implications. These delegates strive to ensure that their colleagues in the Assembly have sufficient information for an informed vote.

AAPL members serve or have served on the APA's 13 councils as well as associated committees and workgroups, including, but not limited to, addiction, geriatric, consultation-liaison, and research psychiatry (see Table 1). Each of these special interest groups uses its collective expertise to research, craft, critique, and revise APA's position statements, resource documents, white papers, toolkits, and other documents on their areas of expertise. They offer educational programs at APA annual meetings and elsewhere, and they may be asked to take on challenging tasks. For example, the APA Ethics Committee was chaired by an AAPL member when it was tasked with revisiting the Goldwater Rule in response to numerous inquiries to the APA about psychiatrists commenting on the behavior and mental health of public figures during the 2016 presidential election season.⁴ The Committee fulfilled its mission by reaffirming the Goldwater Rule, clarifying areas of potential ambiguity and advocating for the ethical practice of psychiatry.

The APA's Council on Psychiatry and the Law (CPL) and the Committee on Judicial Action (CJA), which are mainly composed of AAPL members, focus on diverse matters that have mental health and legal implications. CPL has examined topics as di-

verse as the equity of Physicians' Health Programs, inquiries about a physician's mental health on medical licensure applications, pharmaceutical sales representatives' involvement in drug courts, and solitary confinement of juvenile and adult offenders. CPL assembled a workgroup of forensic and correctional psychiatrists to write the third edition of *Psychiatric Services in Correctional Facilities*, which was published in 2016.⁵ CPL is known for its production of quality documents that inform the practice of psychiatry, including APA's position on psycho-legal matters. CJA reviews legal cases with mental health concerns and advises APA governance on those that may merit APA input. CJA works with APA attorneys to prepare or sign onto *amicus curiae* briefs that are submitted to courts, including the U.S. Supreme Court. Some of these cases have become landmark cases in forensic psychiatry and are taught in forensic psychiatry training programs.

Forensic psychiatry's profile increased significantly in 2011 when CPL members were invited to serve as forensic advisors to the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*.⁶ The advisors exchanged ideas with mental health researchers, statisticians, and clinicians. The involvement of forensic advisors resulted in timely responses to forensically relevant matters and likely reduced the presence of ambiguous and controversial language in the published text. DSM-5 also has a cautionary statement about its use in forensic settings.⁶

AAPL members are involved in other APA groups, including the APA Guideline Writing Group, which recently has produced documents on prescribing antipsychotics to elderly patients with dementia and the medical treatment of alcohol use disorder. Like the DSM-5 Workgroups, the involvement of forensic psychiatrists in the Guideline Writing Group is conducive to the publication of documents that are less likely to have language that may be controversial in medical-legal matters. This is essential for psychiatric practice.

Many child psychiatrists who are AAPL members also are members of AACAP, which advocates for matters that pertain to child and adolescent mental health. Child forensic psychiatrists have been involved in developing AACAP policy statements regarding psychotropic medication use in youths in foster care, off-label prescribing in children, and separating children from families.⁷ AACAP also has sev-

eral policies related to justice-involved youths, including transgender youth in juvenile justice, interrogation of juveniles by law enforcement officers, and solitary confinement of justice-involved youths.⁷ Additionally, AAPL members have been involved in AACAP deliberations regarding submitting *amicus curiae* briefs for cases involving juvenile sentences of life without parole and other salient topics.

The psychiatry delegation to the AMA is composed of representatives of APA, AACAP, AAPL, and the American Association of Geriatric Psychiatry. The delegation works to ensure that AMA's policies enhance the capacity of psychiatrists to practice safely and ethically, our patients' access to quality mental health care, and our ability to provide forensic psychiatry consultation to those who seek it. AAPL's AMA representatives are involved with the AMA Council on Ethical and Judicial Affairs and have contributed to the revisions of the AMA Code of Ethics, especially as it relates to privilege and confidentiality, capital punishment, and psychiatrists as media consultants (Fassler D, personal communication, February 2019). They have testified about matters pertaining to capital punishment, solitary confinement, sentencing juveniles to life without parole, and improving access to mental health services in corrections facilities. In addition, an AAPL representative who also is an attorney has collaborated with the AMA legal staff on preparing *amicus curiae* briefs (Piel J, personal communication, February 2019).

AAPL has an excellent reputation for offering forensic mental health education to professionals of various disciplines. This is evidenced by the growing presence of non-forensic psychiatrists at AAPL's Annual Meetings and the Forensic Psychiatry Review Course. Also, AAPL members give presentations at other professional meetings, which keeps forensic psychiatry at the forefront of 21st century medical and mental health practice.

Canadian Perspective

Because AAPL represents the continent of North America, a discussion about forensic psychiatry in Canada is warranted. The Royal College of Physicians and Surgeons of Canada oversees psychiatry residency training in Canada. Psychiatrists are trained as medical experts, managers, health advocates, scholars, and professionals.⁸ Canadian psychi-

atry residents and attending physicians are members of various organizations in organized medicine, including CPA, which supports the professional needs of approximately 4,700 psychiatrists.⁹ CPA is the umbrella organization for three subspecialty groups in geriatric psychiatry, child psychiatry, and forensic psychiatry. Thus, all members of the Canadian Academy of Psychiatry and the Law (CAPL) are members of CPA (Glancy G, personal communication, February 2019).

CAPL, which has roughly 200 members, serves to provide forensic psychiatry education, develop practice standards, foster interdisciplinary collaboration, encourage research, and “to undertake an advocacy role on issues related to forensic psychiatry in cooperation with other interested national and provincial organizations.”¹⁰ CAPL members often advocate and take positions through CPA. They testified before Parliament when postconviction sexually violent predator legislation was being considered and about restructuring the automatism defense and criminal responsibility (Glancy G, personal communication, February 2019). They have helped craft CPA policy statements involving media guidelines on suicide policy. CPA and APA psychiatrists also collaborated on a statement regarding courtroom testimony and sharing of mental health information across borders.^{10,11}

Future Directions

One challenge forensic psychiatrists will likely take on is educating others about the effect of inaccurate trial transcripts on the emotional well-being of deponents, plaintiffs, defendants, witnesses, and those who care for them. In a study that has been accepted for publication in the June 2019 issue of *Language*, Jessica Kalbfeld, Ryan Hancock, and Robin Hancock determined how speaking African-American English affects the accuracy of court transcripts.¹²

In Philadelphia, successful candidates for the court reporter certification certificate must achieve an accuracy rate of 95 percent. The researchers had 27 Philadelphia court reporters transcribe sentences from voice recordings of eight native speakers of African-American English. The reporters transcribed 59.5 percent of the sentences and 82.9 percent of the words accurately. The words who, what, where and when were often transcribed incorrectly, and sentences were correctly para-

phrased one third of the time, a finding that was not systematically related to accuracy.^{12,13}

The problem may be that the training for court reporters and the certification exam utilize “Mainstream American English spoken by lawyers, judges, and broadcasters.”¹³ However, this does not reflect the diction of many people who testify.¹² Court reporters informed the researchers that they want training that will improve their capacities to do their jobs effectively. The research team plans to repeat the study with voice recordings from Latinos.

The study has many concerning implications. Individuals who are wrongly convicted are at risk for being labeled antisocial or delusional for adamantly proclaiming their innocence while confined in a jail or prison. In addition, transcription errors can result in individuals being denied due process due to their diction, both in court and on appeal. This is what happened to Warren Demesme, who was a suspect in two sexual misconduct cases in New Orleans.¹⁴ He acknowledged understanding his *Miranda* rights and waived them when he consented to two police interviews. At one point during the second interview, he said, “. . . If y’all think I did it, I know that I didn’t do it so why don’t you just give me a lawyer dog cause this is not what’s up” (Ref. 14, p 1). The police did not stop the interrogation or arrange for Mr. Demesme to meet with an attorney. Mr. Demesme later incriminated himself and was charged with two offenses.

The trial judge denied Mr. Demesme’s motion to suppress the confession. The ruling was appealed to the Louisiana Supreme Court, which upheld the lower court’s decision without a written explanation. Although he was not legally obligated to do so, the Honorable Judge Scott J. Crichton prepared a concurrence, which said, “In my view, the defendant’s ambiguous and equivocal reference to a ‘lawyer dog’ does not constitute an invocation of counsel that warrants termination of the interview . . .” (Ref. 14, p 2). Note that Merriam-Webster’s dictionary defines the slang term “dawg” as man, buddy, or dude.¹⁵ The lawyer dog case, as it is known, garnered the attention of the media and illustrates why the accurate trial transcription is needed.

Conclusion

AAPL and CAPL are valued forensic psychiatric organizations that disseminate education. Knowledge is the foundation on which we predicate and

craft opinions that may fuel advocacy for mental health patients, policy and practice, as well as physician well-being. The missions and policies of these organizations work well. Both permit members to influence organized medicine by engaging in mental health advocacy in other professional organizations and their affiliated PACs. By distinguishing between advocacy and education, AAPL and CAPL have gotten it right.

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