Survey of Forensic Psychiatrists on Evaluation and Treatment of Prisoners on Death Row

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Psychiatrists have debated their role in evaluating prisoners accused of capital crimes and in treating prisoners on death row when restoration of competence would result in execution. Despite debate, there are no previous surveys of psychiatrists' opinions on this issue. We sent an anonymous questionnaire to all board-certified forensic psychiatrists in the United States. Of the 456 forensic psychiatrists identified, 290 (64%) returned the survey. Most respondents supported a role, in at least some cases, for psychiatric evaluation of prisoners accused of capital crimes. Respondents were divided on whether or not psychiatrists should treat incompetent death row prisoners if restoration of competence would result in execution. Attitudes about the ethical acceptability of capital punishment were associated with views about the psychiatrists' role but were not determinative in every case.

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In the United States, citizens have passionately debated the legitimacy of capital punishment.[1–3] Psychiatrists also have disputed their role in death penalty cases since both psychiatric evaluation and treatment of condemned prisoners can raise ethics dilemmas.[4–12] Since the 1986 Supreme Court ruling that execution of an "insane" (incompetent to be executed) inmate was not constitutional,[13] professional debate has intensified on the issue of evaluation of competency to be executed and its potential consequences. In particular, psychiatric treatment of an incompetent-to-be-executed death row inmate can result in restoration of competence and thereby place the individual one step closer to execution. In considering whether to participate in evaluation and treatment of death row prisoners, psychiatrists, particularly forensic psychiatrists, have struggled with issues of personal and professional ethics. Medical ethics in the United States as promulgated by the American Medical Association (AMA) takes the position that it is unethical for any physician to directly participate in an execution.[14] In addition, the current opinions of the AMA Council on Ethical and Judicial Affairs (CEJA) of the AMA Code of Medical Ethics suggests that physicians "should not" treat an incompetent death row inmate for competency restoration unless the death sentence is commuted or the inmate is undergoing extreme suffering.[14]

Among psychiatrists, forensic psychiatrists arguably have the greatest expertise and experience in the criminal justice arena. The debate among psychiatric and legal experts over the appropriate roles of psychiatrists in capital case evaluations has been intense,[4–12, 15, 16] but the attitudes of forensic psychiatrists have never been sought. The one known prior survey of psychiatrists only asked whether evaluation of competence to be executed and treatment of incompetent death row prisoners were ethics

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problems.[17, 18] We report the results of a national survey of forensic psychiatrists about their views on the role of psychiatrists in capital cases.

Method

Forensic psychiatrists in the United States were identified from the membership of the American Academy of Psychiatry and the Law, the principal forensic psychiatrists' organization in the United States. To provide some uniformity in knowledge base and clinical experience, only those who, as of April 1997, were listed as having certification from the American Board of Forensic Psychiatry or subspecialty certification in forensic psychiatry from the American Board of Psychiatry and Neurology were included.

Respondents were asked their age, gender, ethnicity, years of forensic practice, and whether or not they worked in a prison or jail. The forensic psychiatrists marked the importance of religion on a 10-point scale with 0 = "religion not important to me" and 10 = "religion is very important to me."

The goal of the survey was to understand respondents' views about the role of psychiatrists in decisions that may hasten a patient's or evaluee's death. The respondents were asked their opinions about psychiatrists' roles in physician-assisted suicide[19] and capital punishment. Of the five questions about capital punishment, one examined the respondents' experiences in pretrial (competence to stand trial) evaluation of a defendant charged with a capital crime. A second question explored the respondents' experience in post-trial (competence to be executed) evaluations. Third, respondents were asked their overall opinion about the ethical acceptability of capital punishment: never ethical, not ethical under some circumstances, solely the prerogative of society to decide, and always ethical. Fourth, they were asked to indicate in which phase of a capital case was it ethical for a psychiatrist to participate: no phase, because psychiatric participation is unethical; pretrial and trial phases only; pretrial, trial, and post-trial competence to be executed examinations in inmates who are presumed to be competent; or any phase of a capital case except the execution process itself. Finally, the responding forensic psychiatrists were asked: "If a patient is found incompetent to be executed, should psychiatrists be involved in treatment to restore the patient's competence?"

Each forensic psychiatrist was mailed a copy of the survey, a reminder postcard, and then a second copy of the survey with a simultaneous reminder phone call. No identifying data were placed in the questionnaire. To allow tracking of questionnaires and maximize the return rate, envelopes were coded with an identifying number. Responses were not reviewed until the survey had been separated from the identifying envelope. The survey was exempted from need for written informed consent by the Institutional Review Board at the Portland Veterans Affairs Medical Center. The surveys were returned between August 1997 and October 1997.

For the statistical analyses, associations between items or groups of respondents were compared with a chi-square test for discrete responses and a t test or one-way analysis of variance for continuous variables. All p values are two-sided.

Results

Of 456 board-certified forensic psychiatrists identified, 290 (64%) returned the survey. The survey was returned by 63 percent of respondents from the Northeastern United States, 60 percent from the North Central United States, 65 percent from the Southern United States, and 62 percent from the Western United States. The respondents' mean age was 51 years, 87 percent were male, and 92 percent were Caucasian. They had a mean of 15 years of forensic practice and 20 percent worked in a jail or prison. Over two-thirds of respondents had performed pretrial "competence to stand trial" evaluations of persons charged with a capital crime, but only about one-sixth had performed post-trial "competence to be executed" evaluations of prisoners sentenced to death (Table 1).

There was little agreement among forensic psychiatrists about the acceptability of capital punishment or the role of psychiatrists in capital cases (Table 1). Although one-third of respondents viewed capital punishment as never acceptable, 40 percent indicated that they believed that capital punishment was ethical in some but not all cases, and one in four viewed it as solely the prerogative of society. Only 8.5 percent of psychiatrists felt that it was unethical for psychiatrists to participate in any phase of a capital case; 22.3 percent felt that pretrial or trial competence evaluations were ethically permissible, but competence for execution evaluations were not; and slightly more than half agreed that all forensic competence evaluations were ethically permissible. The respondents were divided about the role of psychia-

Table 1 Views and Practices of 290 Forensic Psychiatrists on Capital Punishment

	No. (%)
Views on capital punishment	
Never acceptable	96 (33.4)
May be ethical under some circumstances	116 (40.4)
Solely the prerogative of society	71 (24.7)
Always ethical	4 (1.4)
Should forensic psychiatrists participate in capital cases?	
Never acceptable	24 (8.5)
Pretrial and trial phases only ethical	63 (22.3)
Pretrial, trial, and posttrial competence for execution if competence presumed	49 (17.3)
All phases except execution	147 (51.9)
If inmate is incompetent to be executed, should psychiatrist treat to restore competence?	
No	142 (53.6)
Yes	123 (46.4)
Respondent has performed pretrial "competence to stand trial" psychiatric evaluations of persons charged with a capital crime	
No	90 (31.3)
Yes	198 (68.8)
Respondent has performed posttrial "competence to be executed" psychiatric evaluation of persons sentenced to death	
No	237 (82.3)
Yes	51 (17.7)

trists in treating prisoners to restore competence to be executed, with slightly more than half indicating that psychiatrists should not attempt to restore the competence of incompetent prisoners on death row.

The relationship between demographic variables and attitudes toward capital punishment and the psychiatrist's role was examined. For the purposes of all analyses, psychiatrists who marked that capital punishment was solely the prerogative of society and those who indicated that it was ethical under all circumstances were placed in the same category. Age ($F = 1.8$, $df = 2,279$, $p = .17$), importance of religion ($F = 2.6$, $df = 2,279$, $p = .08$), prison practice ($\chi^2 = 1.02$, $df = 2$, $p = .60$), and region of practice ($\chi^2 = 2.91$, $df = 6$, $p = .82$) had no influence on overall views toward capital punishment. Women respondents were less supportive of capital punishment. Twenty women (53%) viewed capital punishment as never acceptable, 13 (34.2%) as ethical in some circumstances, and 5 (13.2%) as solely the prerogative of society or always acceptable. In comparison, 76 men (30.8%) viewed capital punishment as never acceptable, 102 (41.3%) found it acceptable in some circumstances, and 69 (27.9%) found it solely the prerogative of the society or always acceptable ($\chi^2 = 7.95$, $df = 2$, $p = .02$).

In examining the phases of capital cases in which psychiatrists should participate, there was no effect of age ($F = .84$, $df = 3,274$, $p = .47$), gender ($\chi^2 = 4.76$, $df = 3$, $p = .19$), importance of religion ($F = 1.29$, $df = 3,278$, $p = .28$), region of practice ($\chi^2 = 10.82$, $df = 9$, $p = .29$), or prison practice ($\chi^2 = 2.7$, $df = 3$, $p = .43$). In examining whether or not psychiatrists should be involved in restoring the competence of an incompetent inmate, there was no effect of gender ($\chi^2 = .43$, $df = 1$, $p = .51$), importance of religion ($t = -1.59$, $df = 258$, $p = .11$), region of practice ($\chi^2 = 6.84$, $df = 3$, $p = .08$), or prison practice ($\chi^2 = .89$, $df = 1$, $p = .35$). Those who supported a role for psychiatrists in restoring the competence of inmates were older (mean age = 52.9 years, SD = 10.8 years) than those who indicated that psychiatrists should not treat to restore competence (mean age = 49.1 years, SD = 10.3 years, $t = -2.93$, $df = 258$, $p = .004$).

Psychiatrists' views on the ethical permissibility of capital punishment were associated with their views on phases of capital cases in which forensic psychiatrists should participate. Psychiatrists who supported societal limitations on capital punishment also supported limiting roles for psychiatrists in evaluating the competence of condemned prisoners or treating them. For example, 53 (71.6%) of 74 respondents who viewed capital punishment as solely the prerogative of the society, or as ethical in all cases, also believed that it was ethical to participate in any phase of a capital case (except the execution). In comparison, 93 (44.7%) of 208 psychiatrists who placed some kind of limitation on the role of capital punishment in society believed that participation in any phase of a capital case was ethically permissible ($\chi^2 = 15.8$, $df = 1$, $p < .001$). Of 70 psychiatrists who viewed capital punishment as solely the prerogative of society or always ethical, 48 (68.6%) also believed that it was ethically permissible for psychiatrists to restore the competence of death row inmates. In comparison, of the 194 who believed that there should be societal limits on capital punishment, 74 (38.1%) believed that it was ethically permissible for a psychiatrist to restore the competence of a condemned prisoner ($\chi^2 = 19.16$, $df = 1$, $p < .001$). Despite this strong relationship, ethical views about capital punishment were not definitive in determining respondents' views of the psychiatrist's role. For example, 27 (29%) of 92 psychiatrists who believed that capital punishment was never acceptable, also

believed that the psychiatrist could ethically participate in all phases of evaluation of competence. Twenty-four (27%) of 88 psychiatrists who believed that capital punishment was never acceptable also believed that restoring the competence of a patient to be executed was ethically permissible.

Forensic psychiatrists' views were, in general, consonant with their practice. Sixty-three percent (n = 15) of the 24 forensic psychiatrists who stated that any involvement in evaluating prisoners accused or convicted of capital crimes was unethical had never performed a pretrial competence evaluation. In comparison, of 258 respondents who indicated that some involvement in some phase was ethically acceptable, only 75 (29.1%) had never performed a pretrial evaluation (χ^2 = 11.29, df = 1, p = .001). Of the 87 respondents who indicated that the only phases in which psychiatrists should participate were pretrial or not at all, only 5 (5.7%) had ever performed a post-trial "competence to be executed" evaluation. Of 195 who indicated that post-trial or all phases were acceptable, 45 (23.1%) had performed a post-trial evaluation (χ^2 = 12.39, df = 1, $p < .001$).

Discussion

This study represents the first national survey of forensic psychiatrists' attitudes about the role of psychiatry in death penalty cases. The main findings of the survey are that: (1) despite more than a decade of debate on this issue, there was a lack of consensus among forensic psychiatrists about their role in evaluation and treatment of prisoners accused of capital crimes; (2) overall, demographic characteristics of forensic psychiatrists had little effect on their attitudes; (3) views on the ethical permissibility of capital punishment were associated with attitudes about the psychiatrist's role, but were not entirely determinative; and (4) forensic psychiatrists' beliefs about the ethical acceptability of the professional role with condemned persons was associated with the likelihood of clinical practice in this area.

Experts in Anglo-American law have long debated the issue of competence to be executed.[20] Only in 1986 in *Ford v. Wainwright* did the U.S. Supreme Court rule that execution of an insane prisoner violated the Eighth Amendment prohibition against cruel and unusual punishment.[13] The court provided no guidance on how the legal system should proceed with these prisoners or the potential ethical dilemmas that might result for professionals. A few years later, after agreeing to hear *Perry v. Louisiana*,[21] the U.S. Supreme Court appeared reluctant to tackle the issues entailed by the involuntary treatment of a death row prisoner who was both incompetent to be executed and refusing psychiatric treatment. Instead, the U.S. Supreme Court remanded Perry's case back to the trial court for further proceedings to decide the right to refuse treatment issue in light of *Washington v. Harper*.[22] The trial court reinstated the involuntary medication order. The Louisiana State Supreme Court subsequently heard the case on appeal and ruled against the involuntary administration of antipsychotic medications to restore Perry's competency to be executed. However, the Louisiana State Supreme Court left open the possibility that the death sentence could be reinstated if Perry became competent to be executed without the use of antipsychotic medications.[23] Only the state of Maryland has provided for commutation of a prisoner's death sentence upon a legal determination of incompetence to be executed.[24]

Psychiatrists have struggled with the ethical conundrums of the competency to be executed issue. Extensive discussion of the ethics pitfalls of psychiatrist participation have been the subject of vigorous formal debates at the Annual Meeting of the American Psychiatric Association in 1987[25] and again in 1997.[26] The ethics analysis of the competence to be executed issue largely depends on whether physician actions such as forensic psychiatric assessment and subsequent psychiatric treatment can be considered part of the causal link with a subsequent execution. On balance, mental health commentators have discouraged treating incompetent death row inmates unless their death sentence is commuted.[5,8–10] About a decade ago, physicians in New York State took the position that evaluating a death row inmate's competency to be executed was unethical.[27] The AMA, a major force in the development of professional medical ethics guidelines, supports the position that physicians should not treat incompetent to be executed inmates absent a commutation of the death sentence.[14] More recently, during the August 1996 World Psychiatric Association (WPA)[28] meeting in Madrid, the WPA General Assembly adopted the *Declaration of Madrid*, which included the following guideline, "Under no circumstances should psychiatrists participate in legally authorized executions or participate in assessment of competency to be executed."

We found that many forensic psychiatrists did not share the views of experts and professional organizations. Only 8.5 percent of respondents believed that it is never acceptable to evaluate a condemned prisoner. Almost half believed that an inmate who is incompetent to be executed should be treated to restore competence. Reasons for their opinions are not revealed by the survey. The results suggest that despite debate on these issues and recommendations by mental health commentators and professional groups, there remains a lack of consensus of opinion on these issues among forensic psychiatrists.

Respondents' views of the ethical acceptability of capital punishment influenced their attitudes about professional roles and their potential participation in capital cases. These views were not entirely determinative. Those who believed capital punishment to be ethically unacceptable were less likely to favor forensic psychiatrist participation in capital cases or psychiatrist involvement in the restoration process of an incompetent condemned prisoner. Yet one in four respondents, who were ethically opposed to capital punishment in all cases, still believed that participation by the psychiatrist was ethically permissible.

Younger age was associated with opposition to treatment to restore competency to be executed and female gender with less overall support of capital punishment. Region of practice, ethnicity, religiousness, and employment in a jail or prison setting were not associated with the acceptability of capital punishment, permissibility of participation in capital cases, and views about psychiatric treatment to restore incompetent death row inmates. As such, the overall effect of demographic factors on forensic psychiatrists' beliefs was small.

In conclusion, the results of this survey of forensic psychiatrists reveal diverse opinions about the ethical permissibility of psychiatrists' participation in death penalty cases. Because professional ethics evolve with time and our survey took place in 1997, the survey respondents did not have the benefit of more recent AMA CEJA opinions about the professional role of physicians in capital cases. Advances in the forensic sciences have revealed that many convicted felons did not commit the crimes for which they had been sentenced.[29] This revelation has given new life to opponents of capital punishment. Despite these developments, the heterogeneity of the respondents' opinions suggests that a consensus and agreement with the CEJA in defining the appropriate professional role in the competence to be executed process is not likely to be achieved soon.

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