

igation case” (*Wiggins* at 520), held that counsel’s actions were defective under *Strickland v. Washington* (466 U.S. 688)—that is, ineffective assistance of counsel. Thus, the Court held that counsel has an obligation to investigate mitigating factors in death penalty cases, but it did not set forth a bright-line rule as to how these investigations should occur or who should perform them.

Furthermore, we find nothing in the Court’s opinion that mandates a report from a social worker. Contrary to Dr. Silver’s contention, psychiatrists and psychologists are also trained to gather, consider, and testify about a defendant’s “biopsychosocial history.” In fact, the biopsychosocial model was developed here at the University of Rochester by George Engel, himself a physician.¹

In addition, we do not agree with Dr. Silver’s contention that *Wiggins* applies to non-death penalty cases. In our view, if the Court had adopted such an expansive rule, it would have explicitly stated so, given the significant implications, logistically and financially, that such a sweeping precedent would entail for the criminal justice system.

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Editor:

We would like to return to an exchange of ideas in the *Journal* in 2003 between Drs. Simon¹ and Welner² regarding the role of psychiatry’s quantifying for the courts as clinical concepts the moralistic notions of depravity and evil. While we applaud Dr. Welner’s efforts to measure empirically such concepts, which have long been the domain of philosophy and theology, and though such research may have some heu-

ristic value, we argue that the final results should not be for clinical application in a courtroom.

We agree that respect for the full humanity of the individual compels psychiatry and psychology to inquire into an individual’s state of mind at the time of his or her crime, to identify possible mitigating factors against a death penalty. However, we contend that no mental health professional should set out to present an opinion justifying or arguing for the imposition of a death penalty.

Beyond the established role of determining competency or identifying mitigating factors, Dr. Welner² invites psychiatry and psychology to an ever more challenging and dangerous role in assessing whether an individual crime is so depraved that the individual who committed it deserves execution. Dr. Welner justifies his position by asserting that “there’s far more effort devoted to the question of who a person is or why that person did something rather than just look at what the person did.”³ He wants to simplify the court’s struggle when it comes to capital punishment. Either a crime is depraved enough that the individual ought to be executed, or not. His Depravity Scale sets out to quantify the amount of depravity in a crime, to disregard the confusing information about who the person is who committed the crime, and to allow a jury to evaluate merely the criminal’s appropriateness for a death penalty based solely on the crime’s depravity score.

We most strongly disagree with Dr. Welner’s plan to provide to courts—and in particular to juries—a scale of depravity presented with the force of science. The court would receive such a scale ostensibly as an empirically based and authoritative determination of evil and depravity, thereby allowing the jury to impose a death sentence with the erroneous reassurance that science has guided their decision.

Any research that intentionally provides support for an individual to be killed cannot be in the best interest of society and certainly must not come from a field devoted to improving the welfare of individuals. Pellegrino,³ writing about the complicity of physicians with Hitler during World War II, argued:

Clearly, protection of the integrity of medical ethics is important for all of society. If medicine becomes, as Nazi medicine did, the handmaiden of economics, politics, or any force other than one that promotes the *good of the patient* (emphasis added),

Letters

it loses its soul and becomes an instrument that justifies oppression and the violation of human rights [Ref. 4, pp 307–8].

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