

# Organized Psychiatry and the Death Penalty: An Introduction to the Special Section

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The American Academy of Psychiatry and the Law (AAPL) has been formally debating taking an official position on the death penalty since at least 1998.<sup>1</sup> It is clear that there are divergent views on the appropriateness of capital punishment, the involvement of psychiatrists in various stages of death penalty proceedings, the propriety of AAPL's taking a stand on this (or any) sociopolitical issue, and even the most effective and democratic methodology for assessing the views of the membership on such matters.

Twice since 1998, the organization has used a referendum to solicit opinion on this subject. Debate in AAPL's Council following the first referendum resulted in AAPL's taking a position calling for a moratorium on the use of the death penalty.

Resolved, that the American Academy of Psychiatry and the Law calls for a moratorium on capital punishment at least until death penalty jurisdictions implement policies and procedures that: A) Ensure that death penalty cases are administered fairly and impartially in accordance with basic due process; and B) Prevent the execution of mentally disabled persons and people who were under the age of 18 at the time of their offenses.

*This resolution is consistent with the results of a survey of the AAPL membership and was formally adopted by the AAPL Executive Council May 6, 2001 [Ref. 2].*

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This was the first time in recent memory that the organization had taken an official position on a sociopolitical issue. (AAPL's archives reveal that, at least once before, the organization took a stand on such a question when it voted to support the Equal Rights Amendment in 1980.<sup>3</sup>)

The adoption of this call for a moratorium occurred shortly after AAPL signed on to the January 2001 *amicus* brief in *Penry v. Johnson*, joining the American Psychiatric Association and the American Orthopsychiatric Association, among others.<sup>4</sup> One of the main arguments in that brief was that the trial court's instruction to the jury did not permit Penry's history of mental retardation to be considered reasonably in mitigation of his culpability.

At the AAPL Annual Meeting in 2002, Dr. Abe Halpern introduced a motion that Council instruct its delegate to the American Medical Association's House of Delegates to vote in support of the abolition of the death penalty, should there be an opportunity to do so.<sup>1</sup> The debate that ensued produced the request for the second referendum, dealing with a call for abolition of capital punishment. Dr. Halpern and his colleagues and Dr. O'Shaughnessy address the questions of process and opinion related to the second referendum in the articles that follow.<sup>5,6</sup>

In May 2003, the Council considered the results of the referendum and decided not to change its current position calling for a moratorium. The editors of the *Newsletter* and *Journal* were asked to use these publications as a vehicle for further discussion on these matters. The results of the referendum were

published in the *Newsletter* in September 2003, along with quotations representing the views members expressed in their replies.<sup>7</sup>

This special section was organized to continue the evolution of these discussions. An attempt has been made to solicit opinions, not only on the subject of the merits of abolition of the death penalty, but also on the subjects of the processes for such debate, the broader issue of the role for medical organizations in sociopolitical discourse, and the specific issue of the appropriate stance for AAPL to take in these matters.

The article by Halpern et al.<sup>5</sup> advances an argument, anchored in medical ethics, that those of us in medical organizations should speak forcefully on moral issues related to our work. They further encourage AAPL members to embrace the opportunity for full debate on this subject.

Dr. O'Shaughnessy, who presided over much of the recent debate as President of AAPL, explores the history of this debate within AAPL, as well as the role of medical organizations in such policy debates. He offers a set of three questions to help shape and focus such discussion.<sup>6</sup>

Dr. Gunn provides a description of the Royal College of Psychiatrists' revised statement opposing the death penalty. He shares a cultural perspective on the political context from which this statement derives, as well as an explanation of the process utilized within the Royal College in discussing and producing important policy statements.<sup>8</sup>

Dr. Grounds explores further the broader matter of medical organizations' issuing position statements on politically controversial subjects. He uses the perspective of forensic psychiatry in the United Kingdom to detail a role for clinicopolitical discourse and influence.<sup>9</sup>

These thoughtful commentaries are important to our profession—and broader society—at a time when American jurisprudence continues to struggle with the contours of capital punishment. In the year after AAPL's call for the prevention of execution of mentally disabled individuals, the U.S. Supreme Court ruled in *Atkins v. Virginia* that capital punishment of mentally retarded individuals was unconstitutional.<sup>10</sup> In 2003, the U.S. Court of Appeals for the Eighth Circuit ruled in *Singleton v. Norris* that a condemned psychotic prisoner could be involuntarily medicated even if such medication would then render the prisoner competent to be executed.<sup>11</sup> Mr.

Singleton was subsequently executed on January 6, 2004.<sup>12</sup> In January 2004, the U.S. Supreme Court granted *certiorari* in the case of *Roper v. Simmons*,<sup>13</sup> in which the Missouri Supreme Court's August 2003 decision anticipated that the U.S. Supreme Court would now consider the execution of individuals convicted of crimes committed before the age of 18 to constitute cruel and unusual punishment.<sup>14</sup>

Future issues of the *Journal* will continue the commentary on this subject, including further opinion on the appropriate organizational role for AAPL, commentary on *Roper v. Simmons*, and publication of the American Psychiatric Association's Resource Document on Mental Retardation and Capital Sentencing,<sup>15</sup> along with clinical and legal commentary on the document.

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