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American Academy of Psychiatry and the Law

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2017 Presidential Address

Michael Norko MD: The Search for Truth

Renée Sorrentino MD

Dr. Norko's presidential address, "The Search for Truth: Explorations of the Spirituality of Forensic Psychiatry," began with introductory remarks by Charles Dike, MD. Dr. Dike told the story of how a young Dr. Norko evolved into a spiritual teacher, educator and physician leader. Dr. Norko's seemingly disparate interests in divinity school and correctional mental health merged into an integrative approach to forensic psychiatry, united in spirituality. The search for truth is not a novel pursuit in forensic psychiatry, but Dr. Norko's "truth" is unique, at least for forensic psychiatry. In his presidential address, Dr. Norko shares his vision of the spirituality of forensic psychiatry.

To begin, Dr. Norko reviewed the relationship between spirituality in medicine dating to the late 20th century. At that time there was attention to the spiritual needs of the patient but an observed "religiosity gap" in physicians. Physicians expressed lower rates of religious beliefs when compared with their patients. Psychiatrists, in comparison to other physicians, were less likely to be religious but more likely to consider themselves spiritual. The concept of "physician spirituality" remained both an ill defined concept and practice. In the daily routine of our professional work as physicians, most of us rarely perceive ourselves as engaging in spiritual activities.

Dr. Norko defined our vocation, medicine, as a personal truth. From the Hippocratic Oath to modern day surveys, the majority of psychiatrists agree that the practice of medicine is a calling. "But can we be called to the common good in forensic work?," asks Norko. More specifically he asks, "Can we see our forensic work as a calling?" His answer is that we, as forensic psychiatrists, fulfill our calling by the art of presence. He defines the "art of presence" in three parts; cognition or intent, emotional awareness, and spiritual, connected to the call to service. He reflects that the "art of presence" reflects an attitude of attentiveness or mindfulness. More specifically the forensic profession is expected to give public witness to the individual's pain and life circumstances as well as concern and understanding of collateral observations. Forensic psychiatry achieves these goals through, in part, the forensic report.

Norko outlined the pathways to truth as empathy and compassion. He remarked on the components of forensic empathy in evaluators such as awareness and empathic listening. In discussing compassion he references Thich Nhat Hanh, author of "Be Free Where You Are," a compendium of teachings gifted to AAPL meeting attendees. As a sample of forensic compassion he referenced the writings of Ciccone and Clements (1984), Candilis *et al* (2001), and Griffith (2005.) Norko proposed that compassion is also an essential element of a clinician's spirituality and a core value in forensic ethics. He suggested that what is needed in forensics is an approach to justice that allows us to attend to and engage the humanity of all subjects of our evaluations. Norko cautioned the field, however, to be cognizant of the dangers of compassion, namely victimization—the dilemma incurred by the desire to be compassionate toward an individual who very much wishes to manipulate or harm the caregiver. He reviewed the risk of vicarious traumatization incurred in our field. To this, Norko suggests we exercise self-compassion, including an awareness of our human limits. He suggested the practice of "centering" to seek clearer truths. To be centered, the clinician must be prepared and self-aware. He

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American Academy of Psychiatry and the Law

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www.aapl.org

COVER STORY

2017 Presidential Address

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suggested the practice of "centering" as a prelude to report writing—a process of data gathering and sitting with areas of conflicting data. Appreciating the feelings and biases in the evaluation is likened to a "moment of settling—a moment of compassion and a liberating experience."

In conclusion Norko commented on the limits on truth imposed by the justice system. Polarized debates, upon which are adversarial system is based, distort the truth. The forensic expert must defend their opinion against misrepresentations by either attorney. Norko invited us, as forensic psychiatrists, to consider what it means for forensic psychiatry to be a spiritual practice, reminding us of our vocation in the search for truth. Norko's foresight in bringing such a timely subject to forensic psychiatry exemplifies his compassion and dedication to his vocation.

Incoming Council Members
Top L-R: Drs. Frierson, Newman, Wall and Anfang
Bottom L-R: Drs. Ostermeyer, Thompson, Rosenbaum and Gold

Dr. Thompson presents Dr. Norko with the 2017 President's Award

"Pass on what you have learned."*

Susan Hatters Friedman MD

I'm consistently amazed by how relevant the daily news is to our chosen field. As I write this at Thanksgiving 2017, we have been hearing on a daily basis about powerful men using their positions to take sexual advantage of less powerful victims (both male and female). We also read quite often about mass shootings in America. And, there will likely be many more survivors of sexual assault and victims of mass shootings by the time this newsletter issue has reached your hands.

There are many smart well-educated people in our society who believe what they hear on the news, that someone must be "crazy" if they shot up a concert or a church. Or that Kevin Spacey or Harvey Weinstein should be seeking some vague counselling or treatment, implying again, mental illness. Mental illness is commonly either stated or implied to be the causal factor for mass murder and sexual assault. How can this help but increase stigma and decrease help-seeking behavior by those who are actually suffering mental illness? What is our role as forensic psychiatrists in educating the public?

We are leading up to the 50 year mark for AAPL. Many of the pioneers of our field are reaching retirement age. AAPL has made great strides in North American and international respect for and understanding of forensic psychiatry. Our meetings are nothing short of amazing learning and fellowship opportunities, and it is exciting to bring back recent findings to colleagues at all of our home institutions. However, there is still much work to be done. Importantly, incoming president Kip Thompson further explicates his theme of a Seat at the Table in this issue. We must ensure that our knowledge and expertise is utilized appropriately. We all recall learning in AAPL's Review Course that the APA did not enter an amicus brief in *Wyatt v. Stickney* and therefore changes were made that were not to psychiatry's liking.

In the current issue, you'll read about Dr. Norko's presidential speech about the quest for truth. This year's luncheon speakers' enthralling presentations are summarized as well. We've included a lot of photos for you to enjoy from the 48th Annual Meeting of our great organization, from committee meetings to the cocktail party.

Dr. Janofsky discusses more about the AAPL Institute, and you might start thinking about a grant for research or teaching you'd like to submit, or encourage your trainee to submit. You will be reminded from the child column that *In Re: Gault* has turned 50, and perhaps pause to think of the gains and challenges in youth forensic psychiatry since. The Ask the Experts column will answer a sticky question, and might even prompt you to think of a troubling query to send in.

You'll also read about the amazing breadth of work and collaborations coming from AAPL committees. In this issue, this ranges from the autistic spectrum disorders in court to mass murder and much information about collaboration with police departments will be shared. As well, recent immigration policy will be discussed from a forensic psychiatric view. The recent AMA meeting (in Hawaii) will be reported on, as will the summer meeting of the International Association of Law and Mental Health (IALMH) in Prague and Pizza-Gate. This might even make you think about applying to join a committee—perhaps the Suicidology committee, or the Peer Review committee, or the newly formed Recovery committee. And of course, the newsletter's arrival in your mailbox will remind you to consider your submissions for AAPL's 49th annual meeting in Austin this October.

Wishing you a happy holidays and a wonderful 2018.

*Yoda

Announcement of 2018 Resnick Scholar & Margolis Travel Awards

Dear colleagues,

This year's annual meeting of the Midwest Chapter of the American Academy of Psychiatry and the Law (MWAAPL) will be held on March 23-24, 2018 in Ann Arbor, Michigan. The conference will be at the Graduate Ann Arbor (615 E. Huron Street, Ann Arbor, MI 48104 734-769-2200). MWAAPL has been organizing high quality forensic meetings for over 30 years and 2018 will be no exception! Meeting information will be posted at: https://midwestaapl.org

MWAAPL offers resident awards with stipends to attend the meeting (see attached for further information on requirements for applying to each award):

- **The Resnick Scholar Award** is a merit based award bestowed upon a resident who has demonstrated a strong record of achievement and interest in forensic psychiatry. We will have 3 Resnick Scholars in 2018. The award will cover meeting registration and hotel room charges for one night.
- **The Margolis Travel Scholarship** is an award established to encourage residents with a Midwest connection (training in, or planning to do a fellowship or working in the Midwest post-graduation), get exposure in the field of forensic psychiatry. We will have 3 Margolis Travel Scholars in 2018. The award will cover meeting registration and hotel room charges for one night.

Award applications should be submitted to Cathleen Cerny-Suelzer at Cathleen.Cerny@uhhospitals.org by January 26, 2018. Questions should also be sent to Cathleen Cerny-Suelzer.

With our best regards,
Cathleen Cerny-Suelzer, MD
Mark Chapman, MD
Bradleigh Dornfeld, MD
Willie Mae Jackson, MD
Philip Margolis, MD
Phillip Resnick, MD

A Seat at the Table

Christopher Thompson MD

On August 7, 2017, U.S. Deputy Attorney General Rod Rosenstein gave a very important address to the International Association for Identification Annual Conference regarding the state of forensic science and initiatives designed to improve the quality of forensic science in the United States.[1] Concomitant with that address, the U.S. Department of Justice issued a press release related to Rosenstein's comments. Included in that press release were the following opinion and plan:

> "The Department of Justice believes that when the adversarial American legal system functions as intended—including through the support of trained forensic examiners and legal practitioners educated on best forensics practices—justice is advanced."
>
> "The Department will develop Uniform Language for Testimony and Reports to give clear guidance to what the Department's forensics examiners may discuss in a courtroom, and direct prosecutors to follow the same guidelines. The Department will also develop a new forensic examiner testimony-monitoring program to ensure compliance with the uniform language standards once they are adopted."[2]

Rosenstein's address and the DOJ press release were components of long-awaited follow up to the 2009 National Academy of Sciences' National Research Council's Report titled "Strengthening Forensic Science in the United States: A Path Forward." The report was quite critical of the United States' forensic science system, and suggested a complete overhaul of the current structure supporting the system, noting:

> "The forensic science system, encompassing both research and practice, has serious problems that can only be addressed by a national commitment to overhaul the current structure that supports the forensic science community in this country. This can only be done with effective leadership at the highest levels of both federal and state governments, pursuant to national standards, and with a significant infusion of federal funds."[3]

"I would propose that we should view AAPL's educational mission and audience more broadly, to include more policymakers, the media, and the public."

The report also recommended improvements in the forensic sciences that primarily would be based on certification and standards, commenting:

> "Standards and best practices create a professional environment that allows organizations and professions to create quality systems, policies, and procedures and maintain autonomy from vested interest groups. Standards ensure desirable characteristics of services and techniques such as quality, reliability, efficiency, and consistency among practitioners. Typically, standards are enforced through systems of accreditation and certification, wherein independent examiners and auditors test and audit the performance, policies, and procedures of both laboratories and service providers."[3]

Although the discipline of forensic psychiatry was not specifically named in either the NRC/NAS Report or the DOJ press release, Rosenstein's remarks referenced forensic psychologists, and it seems reasonable to assume that forensic psychiatrists likely will be subject to some set of externally-imposed standards in the relatively near future. Obviously, this increases forensic psychiatrists' and AAPL's impetus to become involved in the development of these standards, so that they are well-designed and appropriate.

The issue of potential involvement in the development of standards raises the larger question of AAPL's overall involvement in the judicial, regulatory, legislative, and public affairs/media relations arenas. Historically, for a variety of reasons, AAPL has viewed its mission as one of education of its members and other forensic psychiatrists, and therefore seems to have been somewhat hesitant to provide input on issues related to other areas (with the notable exception of a number of senior members' robust participation in the APA's Commission on Judicial Action (CJA)). However, I would propose that we should view AAPL's educational mission and audience more broadly, to include more policymakers, the media, and the public.

From a pragmatic standpoint, AAPL members are subject to a variety of local rules, state statutes, federal regulations, and case law that impact both their individual practice and the practice of forensic psychiatry as a whole. Although most of these rules/statutes/regulations and this case law are applicable on a state or local level, multi-state/multi-jurisdiction or national trends are certainly of interest to a national organization like AAPL. Doesn't it make sense to become involved in the judicial, regulatory, and legislative processes earlier in order to provide informed input

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The AAPL Institute for Education and Research

Jeffrey S. Janofsky MD

During his 1998 to 1999 AAPL Presidential term, Larry Faulkner identified the importance of a strong research foundation in forensic psychiatry and the difficulties in funding such a research enterprise. AAPL subsequently established the AAPL Institute for Education and Research (AIER) in 2004 to help achieve this goal.

The formal purposes of the Institute are to: engage in education and research activities; stimulate and encourage important and creative educational research programs in forensic psychiatry; train and encourage the training of forensic psychiatry educators, researchers and students; provide educational resources and activities for members; and promote development of linkages and synergies among forensic education and research programs

AIER functions separately from the AAPL Council, with its own Board of Directors and Officers.

AIER receives funding both directly from AAPL and from AAPL members. The AIER Board's original plan was to begin AIER with seed money from AAPL Council and AAPL members, and then to eventually to go after outside funding sources. However, finding such outside funding sources has proven difficult. The AAPL Council has chosen to continue funding AIER on an annual basis. Since inception through 2016 the AAPL Council has authorized the transfer of $310,000 to AIER, and individual AAPL members have individually contributed over $140,000.

Lead grantees, who must be AAPL members, have received over $290,000 in funding for 20 projects to date in both research and education. Three projects are currently in review for future funding. Many grantees have been able to use AIER grants as stepping stones to larger grants and further research, a key underlying purpose of the Institute. The maximum AIER grant is for $25,000. Grant amounts awarded since inception have ranged from; $2,900 to $24,000. Formal criteria from AIER grants can be found at: www.aapl.org under the AIER tab.

Larry's term as President of AIER ended in 2017. AAPL Past President Debra Pinals will take over as the Institute's President in 2018. I had an opportunity to interview Deb about her new role in AIER. Aside from being an AAPL Past President, Deb has over the years held multiple roles in AAPL, AIER, and the APA. Deb was recently chair of the APA Council on Advocacy and Government Relations and has now become Chair of the APA's Council on Psychiatry and Law.

In 2016 she moved from Massachusetts, where she oversaw the Department of Mental Health's justice and behavioral health program, to Michigan. Deb is now Michigan's new Medical Director of Behavioral Health and Forensic Programs and holds a concurrent appointment as a Clinical Professor in the Department of Psychiatry as the Director of the Program in Psychiatry, Law & Ethics at the University of Michigan.

Deb noted that through Larry's guidance AIER has achieved sustainability. Deb wants to now focus on how AIER can go from sustainability to more recognition and growth, a normal developmental phase for any foundation. Deb noted that AIER's, "area of interest is not everybody's cup of tea." She was very interested when she heard Mike Norko's Presidential address in Denver, which focused on compassion and sympathy for forensic patients. Deb believes that few people outside our field are sympathic to perpetrators of crime, or the things that we do as forensic psychiatrists within the civil arena. She believes it will therefore be difficult to identify outside interested funders, "some people think some foundations might be interested if they knew more about what we were doing and I have some thoughts about some foundations that we could potentially approach. ... So, that is one possibility - growing external funding. That is why it is really important that we look like a sustainable entity, that we can show that we have developed information that is useful."

Deb wants to see more applicants for AIER grants and wants to encourage younger members to not be intimidated by the idea of applying for a submission. She visited the Early Career Breakfast and the Women of AAPL meetings in Denver to help spread the word, and to emphasize that there are funds available both for educational and research grants.

I want to personally thank Larry Faulkner for all the hard work he has done to for AIER and wish Deb all the best in her new role with AIER.

I also want to ask all of you to contribute to AIER. A good benchmark might be to contribute the amount you charge for one hour of your forensic services. (My thanks to Graham Glancy and his AIER Committee for making this fund raising suggestion). Outside funders use as one benchmark the percentage of an organization's membership that contributes to its foundation, so even if you don't contribute one hour worth of time, I urge you to contribute any amount.

You can do so online by visiting www.aapl.org. To donate by VISA or MasterCard locate the AIER tab, scroll down to the bottom of the page, under "AIER Contributions" click on "Contribute to the AAPL Institute by Credit Card."

Professor Carrie Menkel-Meadow: The Dangers of Adversarialism in the Legal System and Elsewhere

Brian K. Cooke MD

On Friday, October 27, 2017, AAPL members were invited to hear Professor Carrie Menkel-Meadow present, "The Dangers of Adversarialism in the Legal System and Elsewhere." As summarized in the Annual Meeting Program, Dr. Menkel-Meadow is Professor Emerita at Georgetown Law and director of the Georgetown Hewlett Fellowship Program in Conflict Resolution and Problem Solving. She is a national expert in alternative dispute resolution, legal ethics, clinical legal education, feminist legal theory, and women in the legal profession. As typical for the high caliber of AAPL's distinguished luncheon lecturers, she has authored many books, written over 100 articles, and won numerous awards for her work. In addition to her scholarship, Professor Menkel-Meadow often serves as a mediator and arbitrator in public and private settings and has trained lawyers and mediators across the globe.

Professor Menkel-Meadow's lecture was a perfect fit for AAPL President Norko's theme of the search for truth – in our work and in ourselves. Her talk focused on the challenges for the modern legal system in finding facts and resolving legal disputes. Her research comes from years of work in the trenches, and she feels that her work embodies her purpose in life.

First, Professor Menkel-Meadow briefly reviewed the historical development of legal resolution. The parable of King Solomon as a mediator between two women claiming to be the mother of a baby – "parties working it out together" – is one that sets the stage for conflict resolution. Ancient markets were early models for arbitration and mediation. In a Trial by Ordeal, God was the Judge. Later developments illustrated the view that proof does not come from God, including the Lateran Council of 1215, the inquisitorial system, and the emergence of expert witnesses. Oaths, jousts, and battles were replaced with trials by jury and evidence.

Hard pressed to think of any issues as only having two opposing sides, Professor Menkel-Meadow emphasized there are often "brittle" outcomes between the winner and loser in a legal battle. Think of the challenges of legal custody of a minor. Although trials focus on the past, some legal scholars and advocates (like Professor Menkel-Meadow) want to focus on the healing potential of "restorative justice."

She emphasized that our current adversarial system is not designed to get at the truth. Problems of our system include the assumption that truth and justice will emerge from the fight. Advocacy and distortions and exaggerations, and hostility, and the goal is to win instead of to help or solve the problem. Simply stated, winning isn't everything. One of Professor Menkel-Meadow's key points is recognizing that Courts have a "limited remedial imagination," as judges are restrained by the law.

A paradigm shift is necessary that views truth seeking and problem solving as change from the adversarial system. The focus should be on questions, discussion, dialogue, curiosity, exploration, nuance, complexity, focusing on what to do in the future, and having a goal to solve the problem and promote healing. She and her colleagues have argued (since 1976) for a "multi-door courthouse" that may resolve disputes by adjudication, mediation, conciliation, evaluation, or as a referee. The focus should be on mediation (but admittedly not for everything, e.g., mass violence). Importantly, she urges psychiatrists to get trained and involved in mediation.

A lively question-and-answer followed Professor Menkel-Meadow's talk. She admitted that there are bad mediators who manipulate to achieve a desired outcome. The confidential nature of mediation is a potential drawback as opposed to the public nature of judicial decisions. Ideas of therapeutic jurisprudence and collaborative lawyering are also relevant to the solution of our current adversarial system. In conclusion, she remains hopeful that there are new processes that might be used besides the adversarial system, including truth, catharsis, apology, and reconciliation. Mediation promises "non-adversarial problem solving" that focuses on the future, preserves relationships, and is voluntary. Applications of new non-adversarial processes are broad, including settlement in child welfare, mediation in divorce and end-of-life, rulemaking for government policy, and mediators in mass torts and harms. Only time will tell how the role of forensic psychiatry will adapt in the next historical development of our adversarial system as we search for the truth.

Mr. Anthony Graves: Graves Injustice

Ryan C.W. Hall MD

At the recent 2017 AAPL meeting's Saturday luncheon in Denver, Colorado, Anthony Graves provided a powerful recounting of his experience of being an innocent man on death row. Mr. Graves is the 138th United States death row inmate to be exonerated. He spent 18 ½ years incarcerated, with many of those years being in solitary confinement due to overcrowding on Texas Death Row. He had been scheduled for execution on two occasions, before being exonerated. His case being overturned was due to his steadfast focus on maintaining his innocence, as well as the work of The Innocence Network. He was eventually released in 2010. His story was the focus of a *48 Hours* documentary entitled "Grave Injustice," which won a 2012 Emmy Award. He has since gone on to found the Anthony Graves Foundation to promote fairness and effect reform in the criminal justice system. He also has an upcoming book about his experience due to be released in January 2018 entitled *Infinite Hope: How Wrongful Conviction, Solitary Confinement, and 12 Years on Death Row Failed to Kill My Soul*. He was excited to share his story with AAPL members since he felt it was very important to continue to speak and educate individuals involved in the criminal justice system about his experience.

General themes of his talk included how economic disparities, racial concerns, and the potential pressures of the plea bargain system can have significant negative implications on death row cases and the pursuit of justice. During the question-and-answer portion of the talk, Mr. Graves also discussed potential psychologic and psychiatric abuses when it came to prediction of dangerousness at the time of sentencing. He briefly discussed the recent Supreme Court case of *Buck v Davis* (2017), which addressed the testimony of psychologist Dr. Walter Quijano, regarding whether African Americans are more likely to commit future violent crimes due to their race. Mr. Graves also raised questions about how accurate the death penalty can be and quoted that due to human error and mathematical chance alone, at least 4% of individuals on death row would be expected to be innocent. He noted that over 500 executions had occurred while he was on death row, implying the possibility of at least 20 innocent persons being put to death.

Mr. Graves also discussed topics directly related to his case, such as the long-term effects of being falsely accused; how many have difficulty believing his story could ever happen in America (being falsely accused of being an accomplice to murder by an individual that Mr. Graves did not even personally know); and the notion that people thought he must have done something wrong, otherwise why would he be charged with a capital case or been found guilty in the first place. Mr. Graves also discussed personal concepts such as how forgiveness and faith allow him to carry on. He noted that he had made the decision early on in the process that "the state would either execute [him] or set [him] free," but he would not compromise his principles since he knew he was an innocent man. Even after a successful appeal to the Fifth Circuit for a new trial, he still remained on death row for a number of years because the courts and prosecutors had difficulty politically and personally admitting that a mistake was made. The finding from the Fifth Circuit, which Mr. Grave notes is an "extremely conservative circuit," was that there was "prosecutor misconduct regarding [his] case and that the truth had gone awry." The level of misconduct was even described as "egregious" in the ruling. He lamented that sometimes the justice system seems more concerned with "winning the case" than seeking the truth. His ultimate take-home message was that when it comes to the death penalty, "the system is failing us and it needs to be reformed."

Mr. Graves' style was incredibly powerful and polished. He included an appropriate amount of humor to effectively deliver his message on a difficult and emotional topic. As noted from a member of the audience, "you share your story with strength and humor." Although we have had many wonderful speakers at AAPL meetings over the years, Mr. Graves' presentation was particularly impactful and powerful, with many members of the audience literally weeping and drawing comparisons to Nelson Mandela during the question-and-answer portion.

Judge John Kane: Reflections on Judging and the Mentally Ill

Joel Watts MD

The first luncheon speaker at this year's conference was Colorado District Court Judge John Kane, who has been on the bench since 1977 and prior to being called to sit as a judge, worked as a public defender. Judge Kane spoke frankly and from the heart about his experiences as judge and his views that forensic psychiatric testimony is invaluable to judges and the justice system in general. He revealed that although he has never presided over an NGRI case in his career and has observed the frequency of this defense dwindling in use since the 1960s, forensic psychiatrists are needed more and more to help courts with sentencing.

He opined that our expertise is not being employed well in this manner and far to infrequently, and as a result, "the system fails" if the trier of fact is not well informed about the psychiatric conditions of an accused. He lamented that often, the process of plea-bargaining is often applied mechanically. He reflected that in his experience, most judges have no training in mental health and that his own decisions over the years have been based on his own intuition.

Judge Kane illustrated his experiences and views with four cases that have stuck with him over the years. Using these examples, he elaborated on difficulties within the justice system, in particular, a tendency of justice officials to display "bureaucratic indifference" towards accused persons. His cases also touched on his desire to mete out sentences that respect the need for accused to be accountable for their actions, yet also allow for them to be able to obtain "treatment for their mental illness humanely." In the case of one particularly violent accused, Judge Kane recognized the pattern of unlucky and traumatic experiences this individual had undergone, which helped transform him into the high-risk offender that he was. Recognizing the offender's considerable risk factors and likely psychopathic disposition, Judge Kane also lamented the lack of documentation of this individual's positive attributes in various reports submitted to the court. Recognizing his high risk and aggravating factors for his crimes, he sentenced the man to 45 years consecutively, but "it made me physically ill to do so. I wish I could have sentenced him to be loved and respected" too. Recognizing the man's intelligence and success in courses he was taking in prison, Judge Kane also had several texts sent anonymously to the accused after sentencing to encourage his educational pursuits.

"He implored forensic psychiatrists to "leave the DSM on the shelf" and write reports that are less rote, but explore dynamics of accused persons in a way that helps judges understand them better as individuals."

Judge Kane reflected throughout his talk on several themes, including the fact that minimum sentencing regimes are unhelpful and how they contribute to a paradigm of disillusionment and bureaucratic indifference in officials within the justice system and even amongst experts called upon to help decision-makers within it. He implored forensic psychiatrists to "leave the DSM on the shelf" and write reports that are less rote, but explore dynamics of accused persons in a way that helps judges understand them better as individuals. As he put it, "judges need advice, counsel and a broader understanding of human behavior." Judge Kane clearly shared the challenges of judging and the difficult balancing act that sentencing mentally ill accused persons requires.

MUSE & VIEWS

"It is hard to believe that a man is telling the truth when you know that you would lie if you were in his place."
H.L. Mencken (1880-1956)

In Re Gault — Half a Century Old

Stephen P. Herman MD, DFAPA, LFAACAP

On February 14, 1912, when Robert Taft was president, Arizona became the last territory to join the continental United States. Statehood had followed decades of violence among white settlers, Mormons, Mexicans and Native Americans. They fought over growing cotton. Labor fought business. Everyone fought over water rights. In early 1903, it was decided to build a colossal dam. This was called The Salt River Project and was located sixty miles northeast of Mesa. Construction began in 1905 and the last block was laid in 1911. It was dedicated by Former President Theodore Roosevelt on March 18, 1911. It flooded over 16,000 acres, which created the largest artificial lake in the world at that time. Yet, controversy over water rights continues to this day.

The name Arizona comes from the Papago "ali-shonak" meaning "small spring." The name became popular following the discovery of rich lodes of silver in 1736. "Ali-shonak" was corrupted into "Arizona." The land was originally part of New Mexico, after the Gadsden Purchase. However, in 1863, during the Civil War, which had reached this far west, those in the western area of New Mexico established their own territory, Arizona.

The state has always been a land of contrasts, from geography to politics, to the law. While the Border Patrol expands alongside a make-believe wall, the mayor of Phoenix has pushed for it to become a sanctuary city. The state that gave us Barry Goldwater, who, in late life, became more progressive, thanks in part to his second wife, also brought forth Senator John McCain, Janet Napolitano, a Democratic governor and then United States Secretary for Homeland Security, and Bruce Babbitt. He served as a Democratic Governor and then United States Secretary of the Interior. Arizona is a right-to-work state, and guns are ubiquitous.

However, following Trump's election, more than 20,000 men, women and children participated in the Women's March in Phoenix, 15,000 in Tucson and 1,200 in Flagstaff, which had faced a snowstorm the night before. Other marches were held in Prescott, Sedona, Jerome, Gold Canyon, Green Valley, Bisbee and Ajo.

Out of this bubbling crucible have come two Landmark United States Supreme Court decisions, *Miranda* (discussed in a past *Newsletter*) and In Re Gault, aka: *Application of Paul and Marjorie Gault, 387 U.S. 1 (1967)*, issued on May 15, 1967. You can hear the oral arguments here: https://www.oyez.org/cases/1966/116

The question before the Warren Court was: Were the procedures used to commit Gault constitutionally legitimate under the Due Process Clause of the Fourteenth amendment?

No, they were not, ruled the Court, 8 – 1. Justice Abe Fortas wrote the decision and Justice Potter Stewart, the dissent. Gault provided juveniles certain adult rights previously denied: the right to timely notice of charges, the right to counsel, the right to confront the accuser and cross-examine, and the right to protections offered by the Fifth and Sixth Amendments.

The back story and what came *after* the United States Supreme Court decision, is fascinating: On the morning of June 8, 1964, Gerald Gault and his friend, Ronald Lewis, were arrested by the Gila County Sheriff. Gerald was already on probation for having been in the company of a teenager who had stolen a wallet from a woman's purse. The allegation this time was that one or both of the boys made lewd remarks during a phone call to a neighbor. While his parents were at work, Gerald was taken into custody. They were not notified. His older brother finally located him at the Juvenile Detention Home. When Gerald's parents showed up, they were told there would be a hearing at Juvenile Court the next day.

There was no transcript or recording of the hearing. No one was sworn in. The complainant was not there. Gerald had no attorney. What is known about the hearing came much later when the judge testified at a subsequent hearing. The arresting officers told one story; Gerald's mother told another, as reported to her by the teenager. The judge said he would think about it. For some unknown reason, Gerald was taken back to the Detention home. A few days later, the arresting officer sent Ms. Gault a short note, written on a piece of paper: "Judge McGhee has set Monday, June 15, 1964, at 11:00 A.M. as the date for further Hearings on Gerald's delinquency."

Again, the complainant, Ms. Cook, did not show up, despite Ms. Gault's request. The judge said that Ms. Cook did not have to appear A probation report was filed without notice to Gerald or his parents. Judge McGhee found that "said minor is a delinquent child, and that said minor is over the age of 15 years." The judge committed Gerald, as a juvenile delinquent, to the State Industrial School "for the period of his minority [that is, until 21], unless sooner discharged by due process of law."

Arizona law did not permit appeals in juvenile cases. A writ of *habeas corpus* was dismissed by the Superior Court. Judge McGhee testified at a hearing before the Supreme Court of Arizona. The state's highest court affirmed the dismissal of the writ. The United States Supreme Court accepted *certiorari*.

Justice Fortas, citing the beneficent intent of the Juvenile Court wrote: "At the adjudication stage, the use of clearly incompetent evidence in order to prove the youth's involvement in the alleged misconduct . . . is not justifiable.

Particularly in delinquency cases, where the issue of fact is the commission of a crime, the introduction of

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Ask the Experts 2017

Neil S. Kaye MD, DFAPA
Graham Glancy MBChB, FRCPsych, FRCP(C)

Drs. Kay and Glancy will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send questions to nskaye@aol.com.

This information is advisory only, for educational purposes. The authors claim no legal expertise and should not be held responsible for any action taken in response to this educational advice. Readers should always consult their attorneys for legal advice.

Q.: How do I get a judge to understand that as a physician, I am quite capable of testifying about numerous medical topics and not just "psychology?"

A. Kaye: Thanks for raising this issue, as this issue has long been one of my "pet peeves." As a physician who specialized in psychiatry, I was on the early edge of the biological psychiatry movement and see myself as a forensic neuropsychopharmacologist. I do clinical drug research as well as clinical work. I have an exam room. I do ECG's, draw blood, and do physical and neurological exams when appropriate. I don't do long term psychotherapy and I don't own a couch.

Many people, including many judges, lawyers, and jurors still don't understand the difference between a psychologist and a psychiatrist. I make sure that during the credentialing process, I have the lawyer lead me through a careful recitation of those differences and to make sure that I have ample time to explain to jurors that I am "a real doctor," a physician, that I have delivered babies, put in sutures, and done lumbar punctures, or other things that may be relevant to medical aspects of the case.

In many cases (especially brain injury cases), I have the expertise to talk about the biology, pathophysiology, anatomy, and medical aspects of the case. I don't want to be limited to only behavioral or emotional topics. And, I believe that I may be the best qualified to actually do that work, and that to do less would actually compromise my ethics and the oath I took to tell the "whole" truth.

Most jurisdictions, allow a lawyer to qualify an expert and to specify that expert's area of expertise. I encourage lawyers to be as broad as possible in that regard. Once I have been qualified as a physician, or as a brain injury expert, when opposing counsel objects, the lawyer for whom I am working can remind the court that I was already qualified in that domain and that my credentials allow for me to continue to teach and to opine. At the same time, I have a duty to limit my testimony to the actual breadth of my expertise, and to be prepared for vigorous cross-examination on all matters on which I opine.

However, I was just in a State case where one of the issues was a worsening of arthritis pain and autoimmune functioning due to emotional stress. The judge ruled that I was not allowed to talk about this since I am not a rheumatologist. I sat there dumbfounded and wondered if the expert rheumatologist would be barred from testifying about the affects of stress, as she isn't a psychiatrist. I couldn't figure out which expert would be allowed to "connect these dots" for the jury. Further, in that particular State, there is a controlling judicial opinion prohibiting an expert from being "qualified" by the court, as the court has held that to do so conveys an unacceptable imprimatur of honor or validation on an expert by declaring the expert "qualified" in a topic or field. Here, the burden on the retaining lawyer to push for admission of testimony becomes critical.

A. Glancy: In preparation for this piece, Dr. Kaye and I had a discussion about the famous philosopher Renée Descartes and his philosophy of the mind. Regarding Descartes's most famous discourse on the nature of the relationship between *a res cognitans* and *a res extensa*, Dr. Kaye takes the position that judges accept the well-known cartesian dualism and place psychiatrists in the role of one who only knows about the mind, but not the body.

In fact, I am taken back to my earliest philosophy courses at the University of Indiana, where I learned that Descartes's perceptual and motivational theories were primarily physiological, suggesting that the bodily fluids or spirits control the body and that these spirits reside in the mind. In fact, like Francis Bacon, Descartes, in his later writing "Discourse on Method," described a form of rational analysis, seeking a method of proof capable of establishing philosophical and scientific propositions. I think therefore that he was given a bad rap, and in fact his views are not far from the views of the contemporary expert, namely Dr. Kaye.

This case does raise the issue of what defines an expert in the courtroom. AAPL ethics guidelines caution: "Expertise in the practice of forensic psychiatry should be claimed only in areas of actual knowledge, skills, training, and experience."

Many cases in the area of the admissibility of psychiatric evidence look at the general acceptance (*Frye v US*., 293 F.1013(1923)), and in later cases there was a focus on the methods of the expert evidence (*Daubert v Merrell Dow Pharmaceuticals*, 509US 579 (1993). In Canadian law, one of the preconditions of admissibility is that the witness must be qualified to give the opinion, or in other words be a qualified expert (*R v Mohan* 1994 1155 SCC). In a later

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Ask the Experts

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review of a particular expert in pediatric forensic pathology, Judge Goudge warned against the repercussions associated with admitting unreliable expert evidence. A senior judge in Ontario, Mister Justice Archibald, warned his readers about the present overinclusive approach to admissibility of expert evidence (Archibald TL, Echlin SE, Annual Review of Civil Litigation 2014 Carswell: Toronto, Ontario).

Therefore, it would be my advice that a forensic psychiatrist should only opine on matters on which she has specialized knowledge gained through experience and specialized training in the relevant field.

I feel confident in saying that forensic psychiatrists have a general psychiatric experience, and therefore can satisfy the criteria for testifying about most aspects of general psychiatry, in the context of a psycholegal question.

On the other hand, where we are asked to stray into areas of general medicine, I would advise caution. Some of us may have had postgraduate training in general medicine, or as Dr. Kaye suggests, may be asked to opine about matters directly relevant to general psychiatry such as traumatic brain injuries or other general medical conditions that might have a direct contribution to psychiatric presentations. In these cases, we can legitimately claim expertise and should be allowed to opine.

Take Home Points:

As the house of medicine strives to correct Descartes's error (or at least to clarify what he actually wrote) and to bring psychiatry back into the house of medicine as the medical specialty it really is, in the definitively expert opinion of Dr Glancy, forensic psychiatrists are encouraged to continue to educate our legal colleagues about our proper role and place as medical experts.

To the Editor:

As usual, I greatly enjoyed the latest AAPL newsletter, especially the reminiscences about Bob Sadoff. I wanted to make two comments.

1) The "Ask the experts" section, capably handled by Drs. Kaye and Glancy, contains this paragraph re forensic fees:

"It would raise eyebrows...if you raise your fee because you know the evaluee can afford it...[y]ou may decide to decrease the fee, if you feel...the evaluee cannot pay your full fee...[emphasis added]"
We might have to call this by a new term, a "Sadoffian slip", since the evaluee is not the retaining agency, the attorney is. This may confuse the young forensic practitioner who wrote in, or others. Attorneys, of course, sometimes cannot afford some experts.

2) Competence to consent to sexual relations can get complicated, as noted in this article from JAAPL:

Feldman, M. and Gutheil, T.G.: Ethical aspects of competence for sexual relations: a case of adult sibling incest. J Am Acad Psychiatry Law 25:217-222, 1997

Congratulations to the editor for an excellent level of professionalism in the newsletter.

Thomas G. Gutheil MD

Reply to letter to the Editor.

Dear Editor,

First, we should say that we were both surprised and flattered that Dr. Gutheil, the man who literally and metaphorically wrote the book on being an expert, reads our column. Clearly, not only does he read it, but he reads it diligently, the same way he approaches all aspects of his work.

In reply to his comments, we should explain that the point that we were trying to make was that it would be improper for a forensic psychiatrist to raise one's fees as a result of knowing that the evaluee was wealthy and could afford even an inflated fee. Of course, Dr. Gutheil, as ever, is technically correct to say that the client, and the person who undertakes to pay the fee, is the retaining attorney. However, even most junior colleagues know that the client has to be able to afford to pay the attorney, in order that the attorney can pay the forensic psychiatrist.

In concluding we would also like to thank Dr. Gutheil for introducing the term "Sadoffian slip" into our lexicon. We should point out, however, that technically this type of error is more properly referred to as a "Gutheilian gaff."

Yours very truly,

Graham D. Glancy MBChB, FRCPsych, FRCP(C)

Neil Kaye MD, DFAPA

Fake News: Forensic Takeaways from "Pizzagate"

J.P. Shand MD, Forensic Psychiatry Fellow, University of Pennsylvania

I have been surprised by the number of people who have not heard of Pizzagate: a conspiracy theory that in 2016 inspired Edgar Welch to walk into a D.C. pizza shop and fire a semi-automatic rifle in order to free the captive children of a pedophilia ring connected to Hillary Clinton's campaign. The Pizzagate theory reportedly started on October 30, 2016, when a Twitter user posted that emails on Anthony Weiner's laptop led the New York City Police Department to discover evidence of the pedophilia. A new conspiracy theory was thus born – and from there, took a very fast but winding road through the internet.[1] Tweets, websites, individuals, world citizens, and bots were directly involved in its propagation.

At the scene, Welch explained to D.C. police "that he had read online that the Comet restaurant was harboring child sex slaves and that he wanted to see for himself if they were there. [He] stated he was armed to help rescue them. [Welch] surrendered peacefully when he found no evidence that underage children were being harbored in the restaurant."[2] Welch wrote in a letter to the court that he "came to D.C. with the intent of helping people" and to relieve suffering, "especially the suffering of a child… It was never my intention to harm or frighten innocent lives, but I realize now just how foolish and reckless my decision was."[3] Welch pleaded guilty to the federal charge of Interstate Transportation of a Firearm and Ammunition and was sentenced to 4 years in prison, with a concurrent 2 years for a D.C. charge of Assault with a Dangerous weapon.[4] Welch's mental health was not placed at issue during the case and he has had no court-ordered mental health evaluation as of yet. However, following his prison term, Welch will be placed on three years of supervised release and have a mental health assessment.[5] Several witnesses requested that he have an evaluation. However, Welch's counsel noted that there was no indication for a mental health assessment as the record showed no evidence of Welch having mental illness.[6]

As assistant US attorneys identified, "Beyond Pizzagate, the Internet is full of wild conspiracy theories where people urge members of the public … to take action."[3] It is therefore likely that at least some of those reading this article will confront an individual, defendant or patient who holds strong to beliefs or has based criminal action on fake news. Citizens and pundits alike often make a swift leap to mental illness being the basis for violence, particularly in high-profile or mass attacks. Such logic unfairly stigmatizes the millions with mental health issues, perhaps deterring them from seeking help. There is also potential hindrance to the nuanced analysis necessary in coming to a psychiatric conclusion on the matter.[7]

The courts often look to forensic psychiatrists to distinguish mental illness from other conditions. Delusional beliefs often include political or religious elements, which must be distinguished from overvalued ideas common in political or religious ideology.[7] However, it is more difficult to elucidate the basis of a belief when there is a significant popular following of a seemingly implausible and even farcical theory (e.g., Pizzagate). The case of Anders Breivik – the Norwegian who killed 69 based on political and nationalistic beliefs – led to the proposition of a new concept of the "extreme overvalued belief."[8] This term is meant to separate the nondelusional belief from delusion or obsession. The extreme overvalued belief is defined to be shared by others in a person's cultural, religious, or subcultural group, often relished, amplified, and defended by the possessor.[8] The idea is proposed to fulminate in the mind of the individual, grow more dominant over time, more refined, and more resistant to challenge. An intense emotional commitment to the belief may lead to the potential of violent acts in its service.[8]

In the evaluation of these individuals, differentiating between an overvalued idea, an extreme overvalued belief or a delusion can be difficult. Therefore, is there a use for an alternate, non-psychiatric category for the vigilante who acts upon the false beliefs of another when these ideas are spread through the media? The limits of current psychiatric nosology will change as science develops[9] and are harmonized with evolving societal values, cultures, and subcultures. When individuals believe conspiracy theories, and pieces of reality are fused into an action plan of dangerous behavior based on fake news stories, the individual's belief — albeit false — may be taken into consideration during trial or sentencing. While individuals will conform their behavior to the law in most cases, when they do not, one may consider that an individual's beliefs based in falsehood (without mental illness) constitutes a mitigating factor. The misguided belief in a conspiracy theory that police or authorities are not following the law, and therefore a citizen's action is required, drives at the heart of the idea of an individual's understanding of subjective moral wrongfulness. Whether this translates into a mitigating factor is yet to be seen. However, at this time, based on the case of Mr. Welch, beliefs based on false news are not a mitigating factor – as he received nearly the maximum sentence requested by the prosecution.

In the age of viral media, forensic psychiatrists' awareness of current political trends and subcultures will be important to help differentiate among a false belief, an extreme

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Autism Spectrum Disorder and the Insanity Defense

Alexander Westphal MD, PhD and Susan Parke MD,
Developmental Disabilities Committee

The law is a means by which society maintains standards of social behavior. Autism Spectrum Disorder (ASD) is a lifelong, developmental disability that alters social insight and ability, and ultimately behavior. People with ASD often struggle to understand the basic principles of social exchanges, principles which are completely intuitive to people without ASD. Because ASD can be associated both with behaviors that breach societal norms and which can be perseverative, individuals with ASD are at increased risk of becoming involved with the legal system.

An ASD diagnosis has the potential to diminish or even remove both responsibility and culpability for criminal behavior.[1] The social disability that occurs with ASD is relevant to *mens rea* and the capacity to understand the wrongfulness of one's actions. Maintaining social norms requires applying general, abstract concepts to individual and complex situations, a process which depends on the type of social insight that is impaired in ASD. ASD is also defined by restrictive and repetitive patterns of behavior, an aspect of which can be rigid or inflexible thinking. This can further undermine any effort to understand and efficiently apply abstract concepts. Hence, individuals with ASD can be impaired in their ability to follow social norms because they struggle both to read social cues and, then, to flexibly adjust their behavior to different contexts.

Another aspect of restricted and repetitive behaviors in ASD is the presence of obsessional interests, which can also lead to legal trouble. Take, for example, the highly publicized case of a man with ASD who has spent a substantial portion of his life incarcerated for stealing mass transit vehicles, including trains and buses. His obsession with these vehicles dates back to childhood, and is very clearly a consequence of ASD. The man can articulate and understand that his actions are wrong, but is unable to control his impulses: In an interview with reporter Sarah Wallace, he said, "It's like I'm drawn in…I don't know how to fight that feeling on my own."[2]

Many US states allow for an insanity defense in criminal cases. However, there are a number of differences between the individual states in the how they define insanity and the way in which it must be related to a defendant's actions in order to qualify for an insanity defense. Most common is the American Law Institute's Model Penal Code (MPC) Test which qualifies insanity as "if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law."[3]

As discussed above, understanding wrongfulness can, in some cases, depend on social insight. In addition, restrictive and repetitive patterns of behavior can undermine the ability to conform one's conduct. Because the two aspects of the MPC insanity defense relate neatly with the two core diagnostic criteria in ASD, it seems reasonable that an insanity defense could be used for ASD. In a 2007 Canadian case of a man with ASD charged with a serious assault, the judge stated:

"The condition…does affect the way the offender interprets the words and actions of those he might encounter. His condition must be considered in arriving at an appropriate sentence in this particular case[4]."

The judge imposed a non-custodial sentence. However, the use of an actual insanity defense among individuals with ASD appears to be a very rare occurrence.

Perhaps a fundamental issue is one of vocabulary. Insanity is generally conceptualized as an aspect of psychiatric illness often related to a psychotic illness. In many contexts, the terms psychotic and insane are conflated or treated as synonyms. And psychotic illness, or insanity, can vary in acuity and can often be treated.

On the other hand, ASD is a generally immutable, developmental condition. During the time that insanity defenses were evolving, ASD was not on the radar. It is only recently that people have begun to realize that there may be a special set of considerations that apply to individuals with ASD in legal trouble.

However, as we have discussed above, the diagnostic criteria for ASD can lead to deficits that are relevant to both arms of the insanity defense. Perhaps the issue, then, is with the name 'insanity defense,' rather than with the way in which the concept is defined.

If the insanity defense were to be called a 'mental condition defense,' or some other name which helped move it away from the outdated concept that only psychosis is severe and disorganizing enough to warrant invoking the defense, we may find that other conditions exist, which are as relevant to legal culpability as psychotic illnesses.

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PHOTO GALLERY

Site visit sponsored by the International Relations Committee.

2018 Program Co-Chairs giving a preview of the Austin meeting.

The Diversity Committee gathers for a photo.

Community Forensic Psychiatry Committee.

Ethics Committee hard at work.

Criminal Behavior Committee poses for a photo.

The new Forensic Recovery Committee.

Winding down at the Committee dinner.

PHOTO GALLERY

Enjoying the poster sessions.

Committee dinner attendees.

Committee members gather for a photo opp.

Mock trial presenters.

2017 Program Chair and President.

2017 Rappeport Fellows.

Colleagues accepting the Golden AAPL Award on behalf of Dr. Mossman.

Former Denver snow storm survivors.

Photo Credit: Eugene Lee, MD

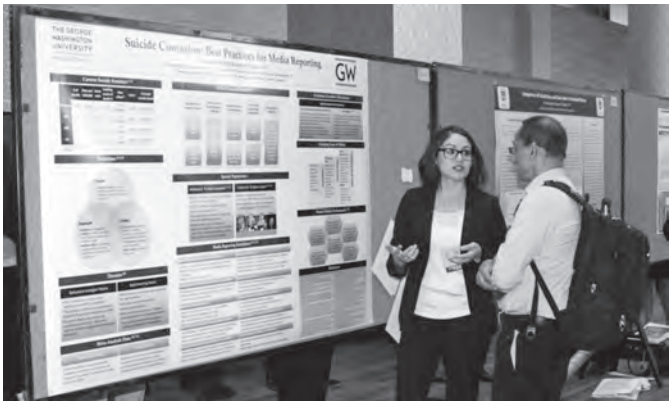
PHOTO GALLERY

Dr. Metzer presents the Red AAPL Award to Dr. Gutheil.

Dr. Hatters Friedman also receives the Red AAPL Award.

Dr. House receives the 2016 Poster Award.

An intrigued audience.



Poster presenters answer attendees questions.

Women of AAPL reception.

Dr. Binder mentors at the ECP breakfast.

Dr. Felthous accepts the Seymour Pollack Award.

PHOTO GALLERY

Attendees enjoying the reception.

Old friends get a chance to catch up.

Drs. Newman and Nanton pose for a picture.

Dr. Gutheil leads a discussion at the ECP Breakfast.

Allison Heru, M.D., Chair of the Department of Psychiatry at University of Colorado Medical School. The Department gave AAPL a generous grant to underwrite the Friday night reception. Pictured here with Jeffrey Janofsky, M.D., Jacquelyn Coleman and Richard Martinez, M.D.

The Liaison with Forensic Science Committee takes a break for a group photo.

Mass Murderer Classifications

Melissa Spanggaard DO, Criminal Behavior Committee

While there continues to be controversy regarding whether the number of mass killings (the killing of four or more people at a single location in a single event) has been increasing; they continue to be low base-rate phenomena. However, some general patterns of offenders have begun to emerge. Accurate classifications help to further research by allowing similar cases to be compared in order to identify common risk factors. Classifications may also help in treatment and prevention efforts by improving our ability to detect people who may be in danger of committing a mass killing and intervening in ways that are more likely to be effective. Many classification systems have been proposed over the years for mass murderers. Here, I will review some of these, as well as the most recently proposed system.

Park Dietz is widely credited with proposing the first typology for mass murder in 1986 . He recognized 3 categories. The first was the family killer who was most often a depressed male, often alcoholic, who killed members of his family before killing himself. The pseudo-commando type killer planned his attacks well in advance and usually chose a public place to carry out his plan, often in an attempt to maximize victim count. Motives most often included anger and resentment due to beliefs of being persecuted or mistreated. In set and run killings, the murderer left the scene before the killings actually took place, commonly using means such as bombs or poison.

In 1997, Kelleher proposed a new typology based on the motive behind the killings. These included the rejected lover, political/hate, sex, execution, and revenge types. He further broke the revenge type into three subtypes based on the target. These subtypes included the fired employee, targeted group, and school killers.

Holmes and Holmes (2001) expanded upon Dr. Dietz's categories by including his original 3 types (family, pseudo-commando, and set and run), and adding 2 more. The disciple group included followers of a charismatic leader, such as members of a cult. The disgruntled employee type targeted current or former employers, including supervisors and coworkers.

"Accurate classifications help to further research by allowing similar cases to be compared in order to identify common risk factors."

Fox and Levin, also in 2001, proposed a new system based on motive. The power type would include the pseudo-commando and mission oriented killers. Revenge killers would include the disgruntled employee, school shooters, and some family annihilators. Targets of this type could include businesses, schools, government offices, and racial or sex based targets. The loyalty type killer believes that his victims are better off dead than continuing to live under some type of circumstance, such as an illness, poverty, or without the killer if he intends to commit suicide. Profit motivated killers include situations in which the killings occur solely to eliminate witnesses to a crime, such as during a robbery. Terror type killings are meant to instill terror in the victims and witnesses.

Most recently, Knoll (2012) proposed a typology based on the homicide-suicide classification system proposed by Marzuk and colleagues in 1992. The fact that most mass killers do not have any expectation of surviving the attacks themselves lends weight to this line of thinking. Also, this system combines both motive and relationship characteristics of the killings, which leads to a more specific typology system. In this system, the first part of the category name is the relationship, or linkage, between the perpetrator and victim. This would include such relationships as school, workplace, indiscriminate, or familial. The second part of the category is the motive, such as resentful, psychotic, or depressed.

For example, the workplace-resentful type would include a current or former employee who is unhappy with some aspect of his work environment such as a supervisor or coworkers. He tends to externalize blame onto others and is likely to have depressive, paranoid, and narcissistic traits. He may also have persecutory delusions. The familial-depressed type could be used when family victims total 4 or more. The killer usually intends to commit suicide, and believes that the family members would be better off dead than surviving and dealing with the ramifications of his actions.

A pseudo-community-psychotic type killer typically has persecutory or paranoid delusions due to a psychotic disorder and targets the group they believe is persecuting them. The school-resentful type would describe those bullied, socially alienated, and disaffected students who are motivated by feelings of humiliation or rejection. There is often "leakage" in these cases, where the perpetrator may inform certain people that the attack is going to occur. They frequently display depressive symptoms, including suicidality, prior to the attack.

As the above review shows, our understanding of mass murderer is continuing to evolve. Unfortunately, these tragedies continue to occur. While there is always difficulty in studying low base rate phenomena, it is important that we continue to study what is known about the people who commit these acts. As our understanding of those who perpetrate mass murder improves, our ability to identify those considering taking such action, and to effectively intervene to prevent the killer from carrying out his plan, will improve along with it.

Support to Public Safety Agencies: Practical and Ethical Issues

R. Gregg Dwyer MD, EdD; Thomas Griggs MD; Andrew P. Carrier MSW; Eric Skidmore DMin, Law Enforcement Liaison Committee

In modern America, law enforcement agencies are among the most expensive, publicly visible and, recently in many cases, controversial elements of government. Moreover, they are indispensable for maintenance of a civil society. Personnel who staff law enforcement agencies constitute a special population who must exhibit a broad array of physical, intellectual, and interpersonal skills under stressful circumstances and in an environment where split-second judgment can yield being heralded as hero or condemned to public shame, unemployment or much worse.

For the safety and stability of our society, therefore, people who work in law enforcement, and the systems in which they work, must be healthy; and the healing professions have a special responsibility and opportunity to support law enforcement agencies and their personnel with expert guidance and direct services.

This article is in part based on and was prepared by four members of a panel presentation at the 45th annual AAPL conference: an academic psychiatrist (and member of AAPL) who works with national, state and local agencies, the program manager of a state-level police employee assistance program, a state highway patrol captain who is now also a licensed mental health professional, and a physician who is the retired director of a comprehensive medical clinic with a state highway patrol agency. The panel discussion highlighted the expansive scope of opportunities for medical and mental health expertise to positively impact public safety work.

Any casual observer would agree that law enforcement is a stressful occupation. Most would say that officers, for the most part, adapt well to the stress and view their jobs and mission as service to their community. However, large and important segments of our society consider the profession to be institutionally flawed or even brutal at times. For our society to be "ordered," this divide must be breached. Simple "them-vs-us" thinking will not solve that problem. There is need and opportunity for thoughtful input from mental health professionals. The most effective of these will be the ones who commit to experiencing the emotion and exhilaration of law enforcement where it interacts with the community. What better training for this adventure than forensic psychiatry. To follow is a description of services forensic psychiatrists can provide to law enforcement agencies, practical considerations in doing so, and cautions regarding potential pitfalls. Real world examples are provided to illustrate how such services have been integrated into long-standing practical applications.

There are multiple combinations and settings for the provision of psychiatry services to police agencies. They vary from answering informal questions to formal consulting contracts for service with the psychiatrist being issued law enforcement agency identification and public safety service radio equipment for real time access by law enforcement personnel. Services include pre-employment screening, fitness-for-duty evaluations, training on stress prevention and management, post critical incident services, and responding in real time to crime scenes, SWAT operations, hostage and barricaded person negotiations, threatened suicide in progress, and officer involved shootings and other traumas.

Services can be divided into three general categories: background and educational resource, post event consulting and real time operational support. Background and educational psychiatry services to police agencies include both mental health and general health clinical consulting and education. Psychiatrists can serve as subject matter experts for research grant proposals that are focused on or include a component of mental health and wellness and for projects that examine forensic behavioral health issues of law enforcement officers. It is not typical for most departments to have internal resources for conducting research, so being offered outside assistance has potential for a positive reception. There are National Institute of Justice (NIJ) grants that specifically fund law enforcement and university partnership as well, announcements for which can be found on the NIJ website (https://www.nij.gov/funding).

Psychiatrists can provide training on stress management and prevention in general and also address specific crime scenarios such as investigation of internet crimes against children. One of the authors provides such services to federal, state, and city agencies. Those departments require all personnel newly assigned to crime scene and cybercrimes units to receive training from the psychiatrist. This course is entitled "inoculation training," given its goal of preventing significant stress reactions. For a couple of the agencies, there is also an annual refresher training for those in the units and a mental health check-in program during which the psychiatrist meets with each investigator alone or with a peer. The latter occurs in a state with statutory protection of confidentiality for the peer as exists for license mental health professionals. Lastly, the members of those units can call on the psychiatrist directly (the federal agency has their own in-house midlevel mental health professionals serve this role) as they deem needed for direct services or assistance with a referral to a mental health provider.

Training on management of police interactions with members of the public who have mental illness is another topical area for education and training by psychiatrists. Two of the authors are part of a 3-day police academy advanced course for department train-

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Support to Public

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ers and mid-level managers on working with that very population. Psychiatrists are also a valuable resource for training police peer team members. These teams are assigned to respond to critical incidents as an immediate resource for other officers.

The issue of critical incidents is possibly the best example of the impact of stress and reactions to stress on police personnel; and the issue provides a good example of the need for innovative intervention by mental health professionals. A critical incident can be defined as any event that has a stressful impact sufficient enough to overwhelm the usually effective coping skills of an individual. Critical incidents are abrupt, powerful events that fall outside the range of ordinary human experiences (Officer.com, 2007). Public safety personnel can be seen as having experienced a critical incident when two, interwoven conditions have been met: 1) they have been involved in an event that is sudden, unexpected, unusual, and includes the loss or the threat of loss of life and 2) involvement in that event requires a much greater than normal degree of psychological and, perhaps, physical adjustment.

It is likely that law enforcement officers and other public safety workers experience the greatest frequency and intimacy with critical incidents of any modern occupational group other than combat military personnel. This kind of stress has reasonably been associated with a high suicide rate (Cowan, 2008), a reduced life expectancy (Violanti, 2010), and possibly with enhanced risk of alcoholism, drug use/abuse, and domestic violence. These issues define law enforcement personnel as a population that would benefit from aggressive preventive, acute, and effective follow-up mental health intervention.

Unfortunately, there is a history of law enforcement beliefs regarding mental health care and services exemplified by comments similar to these: "The visit to the psychiatrist is the last stop before being suspended or terminated.", "I will be stigmatized and labeled.", "My statements will be in a direct pipeline to the administration, chief, sheriff, etc.", "I will be viewed a "weak" by my peers." "Mental health professionals don't really understand because they haven't 'been there'." Recognizing these barriers, many departments and agencies have initiated use of peers as the first, and sometimes only, required step for officers to receive services.

Several sources state that formal peer support in law enforcement began in 1981 with the Los Angeles Police Department, following an officer involved shooting. The goal of peer support is to provide all public safety employees in an agency the opportunity to receive psychological and emotional support through times of professional and personal crisis and to help anticipate and address potential difficulties requiring mental health professional intervention. Peer teams are composed of experienced, sworn officers who have usually been through critical incidents themselves and selected, screened for healthy management of their experience(s), and trained to perform the peer function. They tend to receive instant credibility and trust by virtue of being a fellow officer and having "been there." Peers are in a unique position to share their own experiences and management of stress reactions, which in turn facilitates normalizing the reactions and the seeking of assistance. Some agencies have a "privileged communication policy" and in some states peers are protected by state law under a "confidential client privilege" with certain exceptions adding to the likelihood of officers seeking their help. For examples, in Georgia this is addressed by Ga. Code Ann., § 24-5-510 "Peer counselor privilege" and in South Carolina by Code of Laws of South Carolina, 1976, Title 23, Chapter 1, amended with Section 23-3-85.

A peer support person (PSP), sworn or non-sworn, is a specifically trained colleague, not a counselor or therapist. A peer support program can augment outreach programs such as employee assistance programs and in-house treatment programs, but not replace them. PSPs refer cases that require professional intervention to a mental health professional. A peer support program must have a procedure in place for mental health consultations and training. Ideally, this consultation should be available 24 hours a day. PSPs must be aware of their professional and personal limitations and seek advice and counsel in determining when to disqualify themselves from working with problems for which they have not been trained or problems about which they may have strong personal beliefs. The forensic psychiatrist consultant can serve in the role of selecting, training, and supervising the PSPs in the performance of their peer roles to meet these aforementioned requirements. A PSP can assist the psychiatrist during the referral process as a liaison with the sworn personnel and in providing relevant background information.

An example of a state level agency that provides among its variety of services, mental health prevention, education and treatment coordination, the South Carolina Law Enforcement Assistance Program (SCLEAP) is a partnership between five state agencies and provides support services to state and local law enforcement agencies in all forty-six (46) counties of South Carolina. Founded in 1997, SCLEAP provides direct Peer Support Services to the South Carolina Law Enforcement Division, the South Carolina Department of Public Safety, the South Carolina Department of Natural Resources, the South Carolina Department of Probation, Parole and Pardon Services and the South Carolina Office of the Adjutant General as well as 260+ local agencies. This amounts to peer support services for over 17,000 law enforcement personnel.

The scope of services provided by SCLEAP includes traditional chaplaincy services, chaplaincy training,

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Criminal Behavior: A Rational Choice?

Kavita Khajuria MD

Ever wonder what propels a person with criminal behavior to commit crime? Numerous Criminology Causation Theories exist, one being the Rational Choice Theory.

It stemmed from classical criminology, developed by the Italian social thinker, Cesare Beccaria[1], one of the first scholars to develop a systematic understanding of why people commit crime. The belief was that people act in their own self-interest to achieve pleasure and avoid pain, and believe that the rewards they can achieve from illegal acts outweigh the threat of future punishment. Beccaria also believed that in order for punishment to be effective, it must swift and certain[2]. This was replaced a hundred years later by views that focused on social conditions and influence, rather than personal choice and decision making. By the 1960s, however, classical ideas were once gain embraced, the emphasis being that criminals were 'rational actors' who plan their crimes, and who could be controlled by the fear of punishment.

In the 1960s, Nobel Prize-winning economist Gary Becker applied his views and argued that but for a few mentally ill people, criminals behave in a predictable or rational manner when deciding to commit crime, weighing what they expect to gain against the risks they must undergo and the costs they may incur.[1]

James Wilson, a political scientist, wrote about the "excitement and thrills" concept, valued by those likely to commit crime, and thus unafraid to break the law. They had a low stake in conformity, and were willing to take greater risks than the average person.

A more contemporary version of the classical theory evolved, based on intelligent thought processes and criminal decision making, known as the Rational Choice Theory (RCT). Law violating behavior is believed to be the result of a decision making process, in which the potential offender weighs the potential costs and benefits of an illegal act.[1] He/she consciously evaluates the risks of crime prior to commission of the act, as well as the risks of punishment, ability to succeed, the need for criminal gain and the political value to the criminal enterprise. Crime is generally avoided when the risks outweigh rewards.

Factors believed to structure criminality include peers and guardianship – the belief that parental monitoring reduces the likelihood of their children committing crime, as unsupervised activities increase the risk, notably seen more often in boys. Girls, however, are more likely to socialize at home, a friend's place, or shopping malls, in monitored environments, which reduce the risk. "Sneaky thrills" is another factor, wherein the need for excitement may counter the fear of apprehension, making the act more attractive. Personal traits and experience could also play an important role, use of which furthers the mission (cocaine dealers blend into a lounge). These actors are savvy and know when to quit. Economic need and opportunity is another factor used to explain drug use and persuit of crimes to support the habit.

According to the RCT, structuring crime involves the use of a mindful choice of place i.e back lots for street dealers, a specific choice of target i.e. German cars for auto theft, and creation of "scripts" i.e a series of grooming steps by child molesters.

Is illicit drug use rational? Research has shown that the onset of drug use is controlled by rational decision making[1]. Drug dealers approach their profession in a business like fashion, similar to retailers.

Is violence the product of rational decision making? Evidence confirms that violent criminals, including serial killers, select suitable targets by picking vulnerable targets and those who lack adequate defenses.[1] Critics however, disagree with the RCT model's assumption of generality, its discount of internal-emotive processes and the effect of alcohol[3]. They cite it as a less effective tool against "expressive crimes" that cause most public distress and community disharmony.[3]

What about hate crimes? Research has demonstrated that hate crimes are a result of a calculated response to a concrete event, whose impact is often provoked by the media.[1]

Deterrence models attempt to address punishment, the belief that a *perception* and *fear* of punishment (General Deterrence) or the application of severe punishments (Specific Deterrence) decrease criminal activity. There is little evidence however, that fear of punishment alone can reduce crime rates. Chronic offenders may have an emotional state that renders them both incapable of fear of punishment and less likely to appreciate the consequences of crime.[1] Reporting to authorities is also not well utilized, with less than half of all crimes reported annually, of which only 20% are arrested.[1] Criminals may also discount punishments and may not be deterred if criminal behavior and lack of opportunity in their neighborhood is the norm.

Specific deterrence supposes that people can "learn from their mistakes." Research, however, has shown that supermax facilities compared with traditional prisons had higher felony recidivism. Despite its appeal to some public sentiment, The California "Three Strikes and You're Out" Laws have demonstrated only small deterrent effects[2]. Additionally, the incapacitation effect has not eliminated the risk of further crime, as evidence shows that overall crime rates either decrease or increase[1] with increased incarceration rates.

In sum, the Rational Choice Theory has enjoyed some evidence, but fails to consider the role of emotionally charged states, effects of alcohol, and demonstrates inefficacy in explaining violent, chaotic, or 'expressive' crimes[3].

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American Medical Association 2017 Interim Meeting Highlights

Barry Wall MD, Delegate
Linda Gruenberg DO, Alternate Delegate
Jennifer Piel MD, JD Young Physician Delegate
Tobias Wasser MD, Young Physician Delegate

Aloha from Hawaii! The American Medical Association (AMA) held its interim meeting from November 12th through November 14th in Honolulu. The focus of the meeting was on the opioid crisis, civil rights issues, advocacy, education, protection for physicians, and public health concerns. Spearheaded by the delegation from the American Psychiatric Association (APA) and organized by APA Delegate Dr. Jeffrey Akaka, the Psychiatry Caucus hosted a wonderful reception at the Honolulu Convention Center. Legislators from the Hawaiian General Assembly attended the reception and met with the Psychiatric Caucus Delegation. The reception was mutually beneficial with both legislators and psychiatrists sharing their legislative concerns and insights related to mental health delivery in Hawaii and nationally. The reception, AMA meeting, and informational discussion on legislative issues underscores the immense importance for all AAPL members to become AMA members, members of their state psychiatric association and lobby for important issues facing their states' legislatures on issues pertaining to forensic psychiatry and psychiatry.

The AMA Board of Trustees report on Specialty Society Representation in the House of Delegates five-year review is of great significance to AAPL. It is a very important report as the AMA requires that AAPL has 20% of its members with AMA membership to continue AAPL representation to the AMA House of Delegates. Therefore, it is vital that for the 2018, all members of AAPL become members of AMA.

Introduced at the meeting were several reports and resolutions related to psychiatry and forensic psychiatry, including a report on Medical Reporting for Safety Sensitive Positions (with the focus of the report on aviators.) The wording of the report is such that it implies particular mental health conditions may compromise a pilot's ability to fly the aircraft safely. AAPL Young Physician Delegate Jennifer Piel, M.D., J.D., testified against adoption of the report, advocating for not drawing an arbitrary distinction between mental health and other medical illness. There is concern that can further stigmatize individuals with mental illness and perpetuate misconceptions and fears. However, a diagnosis does not mean impairment. Also we do not want to support physicians in engaging in activities such as fitness for duty without fully understanding the role and requirement which are to be evaluated. The distinction between treating providers who are advocates and objective forensic evaluations must be appreciated.

Other matters of interest include the Council on Ethical and Judicial Affairs (CEJA) report on Competence Self-Assessment and Self-Awareness, a report on Ethical Physician Conduct in the Media (which is related to forensic issues of the Goldwater Rule and what physicians may say and how this may impact employed physicians.) The resolution on Protection of Physician Freedom of Speech, opposes litigation that would challenge the physician for exercising a First Amendment Right to express good faith opinions regarding medical issues. The resolution on Supporting Autonomy for Patients with Difference in Sexual Development, advocates that physicians have a responsibility to support a child's emerging autonomy and should engage their minor patients in making decisions about their own care as much as possible. Additional resolutions include Intimate Partner Violence Policy and Immigration, Revision of AMA Policy Regarding Sex Workers, Treating Opioid Use Disorders in Correction Facilities, Increase Use of Body Worn Cameras by Law Enforcement Officers, Sexual Assault Survivors Rights, Clinical Implications and Policy Considerations of Cannabis Use and Preserving Protections of Americans with Disabilities Act of 1990 which affirms the AMA support legislative changes to the Americans with Disabilities Act of 1990 to government officials and property owners on strategies for promoting access to those with disabilities and oppose legislation that would increase barriers.

Patrice Harris M.D., an AAPL member, is running for AMA President-elect. Dr. Harris is Immediate Past Chair of the Board of Trustees and the Chair of the Opioid Task Force. AAPL Delegate, Barry Wall, M.D. and AAPL member Rebecca Brendel, J.D. M.D. (an alternate delegate for the APA) and Dr. Jeremy Lazarus served as moderators for the CEJA Open Forum regarding Physician Assisted Suicide (PAS) Workshop. The workshop was conducted as small group discussions on PAS and included identifiing the difficulty in crafting policy with physicians who have conflicting viewpoints on PAS. Dr. Piel also continued to serve in a leadership role on the Young Physicians Section's Internal Reference Committee.

For more information on the resolutions and the actions of the AMA House of Delegates at the 2017 Interim Meeting, please go to https://www.ama-assn.org/about/house-delegates-hod.

Jennifer Piel, MD, JD

Srinivasaraghavan

MEANWHILE, INTERNATIONALLY . . .

Lessons from International Travel

Navneet Sidhu MD and Ashok Srinivasaraghavan MD
International Relations Committee

The International Academy of Law and Mental Health (IALMH) held its biennial congress in Prague, Czech Republic from July 9-14, 2017. At a foundational level, the IALMH encourages "multidisciplinary and cross-national approaches involving the law, the health professions, the social sciences, and the humanities" in addressing issues pertaining to the interaction of the law and mental health. In that spirit, this meeting was an opportunity to interact not only with psychiatrists and psychologists, but also with lawyers, judges, authors, researchers and philosophers from over one hundred countries. Many AAPL members not only presented in various panels and workshops but also play an active role in this organization. Dr. Thomas Gutheil, past president of AAPL and professor of Psychiatry at Harvard Medical School, serves on the Executive Committee of IALMH. Dr. Jagannathan Srinivasaraghavan is an IALMH Honorary Fellow. Dr. Alan Felthous from Saint Louis University School of Medicine, Dr. Gutheil, Dr. Donald Meyer and Dr. Eric Drogan from Harvard Medical School, are among those who serve on the editorial board of the International Journal of Law and Psychiatry, the official publication of the IALMH.

The IALMH congress provided a stimulating environment to learn and engage in discussions on how forensic and ethical issues are viewed in various countries and by other disciplines. These were represented by some 275 presentations over the course of the week. It would be outside the scope of this newsletter to name all of them. Some interesting presentations focused on the interdisciplinary collaboration among refugees and asylum seekers; comparisons of involuntary commitment laws in Europe and US; a collaborative discussion of the Amanda Knox trial by speakers from the US and Italy; the ethics of psychosurgery, to name a few. A particularly well attended presentation focused on bestiality and it was surprising to note the decidedly controversial views of an author who had written a book on the subject. A lively debate naturally ensued.

The conference organizers scheduled daily informal lunches (one while enjoying a boat ride on the river) which offered friendly settings to network and have thought provoking conversations. At one such event, Susan Hatters Friedman and I found ourselves engaged in the complex realities of transgender inmates (a subject I had presented on the prior day) with a philosopher from Ireland and a psychologist from Idaho. In addition to lunches, IALMH organized evening activities for all attendees including a performance by the Czech National Symphony Orchestra at the famed Rudolfinum in the city.

Traveling to other countries always enriches the mind and encourages the growth of new ideas. Prague is a captivating city with a rich history, magical castles, friendly locals, great eating options, and a one-time home to greats such Franz Kafka and Mozart. The congress itself was held at Charles University which is one of the oldest and most prestigious universities in Europe, having been founded in 1348. Attending an international conference is a wonderful way of expanding one's mental horizons and nurturing the spirit.

STUDY TOUR OF U.K. FORENSIC PSYCHIARTY

Organized by the American Academy of Psychiatry and the Law &
The Royal College of Psychiatrists Faculty of Forensic Psychiatry

FEBRUARY 26 TO MARCH 2, 2018

PRELIMARY ITINERARY

Monday, February 26: London
- Tour of the **Bethlem Royal Hospital**, the U.K.'s oldest psychiatric hospital.
- Private tour of the **Bethlem Museum of the Mind**, opened in 2015 to record the experiences of people with mental disorders and the history of mental health treatment.

Tuesday, February 27: Nottinghamshire
- Tour of **Rampton Secure Hospital**, one of Britain's three maximum-security psychiatric facilities.
- Afternoon symposium with the Royal College Forensic Faculty entitled **"The Risk of Risk Aversion in Forensic Treatment."**
- **Dinner with the Executive Council** of the Forensic Faculty.

Wednesday, February 28 to Friday, March 2: University of Nottingham
- **Faculty of Forensic Psychiatry Annual Conference 2018**, featuring approximately 400 forensic psychiatrist participants and an international program of speakers.
- **Gala Dinner** on Thursday, March 1.

The tour is self-funded and open to all AAPL members, as well as other interested forensic mental health professionals. Participation is limited to 20. Interested parties should contact the AAPL office by email at office@aapl.org.

A Seat at the Table

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that can positively shape decisions for the benefit of both our members and the public, as well as protect our members from the negative consequences of uninformed policy?

Perhaps more importantly, AAPL is the pre-eminent forensic mental health organization in the United States, if not the world, and possesses unique individual and organizational expertise. In order for that expertise to be as positively impactful as possible, it must be easily accessible to policymakers and the public.

Shouldn't AAPL, and its members with unique areas of expertise, be the source to which courts, legislators, the media, and the public first turn for objective, knowledgeable opinions on a variety of forensic mental health issues? Shouldn't Rod Rosenstein be referencing forensic psychiatrists in addition to forensic psychologists? AAPL has grown and changed in the past (e.g., Dr. Zonana's spearheading increased collaboration with the APA and the AMA, becoming more involved in reviewing and joining amicus briefs, increasing our focus on correctional psychiatry), and should continue to do so in the future. As John F. Kennedy, Jr. realized, "Change is the law of life, and those who look only to the past or present are certain to miss the future."

To that end, during my presidential year, I will be exploring several initiatives, which include:

- reinforcing and augmenting ties with the APA to utilize existing infrastructure in order to address legislative, administrative/regulatory, and judicial issues related to and impactful on forensic psychiatry
- instituting a Judicial Action Committee which would augment and not duplicate the work of the APA CJA by: 1) providing the chance for more AAPL members to become involved in judicial action; 2) affording mentorship opportunities to more junior members interested in this area; 3) providing ongoing information and organizational expertise (e.g., practice resource documents) to the state and federal judiciaries through the National Center for State Courts and, potentially, the Federal Judicial Center, respectively; 4) tracking trends in relevant state appellate decisions and federal district or appellate court decisions; this information could better inform potential future Council decisions regarding *amicus curiae* briefs at the federal appellate or SCOTUS level (e.g., joining or modifying these briefs)
- joining an existing consortium of other forensic mental health/forensic science organizations for purposes of better imparting AAPL's collective organizational and members' individual expertise to policy makers and representing AAPL's and its members' interests; a consortium would help defray costs, improve all organizations' visibility and strength, and increase AAPL's ability to track and impact proposed legislation/regulations/court decisions
- piloting a Government Affairs Committee which would track evolving multiple-state (i.e., trends across states) and federal legislation/regulations specifically involving psychiatry and the law issues; this committee could then provide input and ecommendations to both Council and AAPL's consortium representative, who could in turn provide feedback directly to legislative staff or enforcement/regulatory agencies (e.g., the D.O.J.)
- launching a Media and Public Relations Committee which would aim to establish AAPL as the premier forensic mental health organization to which the media and public turn for objective, expert opinions regarding "psychiatry and law" topics and which would outreach to and liaison with a variety of media outlets, with guidance from leadership; at times when AAPL is unable to offer collective organizational input, opinions, or position(s) regarding the issue at hand, individual members with relevant expertise in the topic area would be available to provide their own views

AAPL and its members are uniquely qualified to shape public policy and opinion as they relate to the interface of psychiatry and the law. I believe we should offer our collective expertise to the public by expanding our involvement in the judicial, regulatory, legislative, and media domains. Collectively and individually, our members also have a vested interest in shaping evolving standards related to the practice of forensic mental health, particularly forensic psychiatry.

We need to be integral participants in developing these standards. As a wise person once said, "If you don't have a seat at the table, you're probably on the menu." Let's serve rather than be served.

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Support to Public

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addiction services, military post deployment services, and referral for mental health care. However, the Peer Support program consumes a majority of the time and energy of the staff and volunteer peer support team. In addition to peer support training programs, in any given year, the peer team will respond to more than 50 serious critical incidents involving law enforcement officers. These peer team deployments include responses to officer involved shootings, line of duty deaths, officer suicides, assaults on officers, serious traffic incidents involving officers, law enforcement vehicle pursuits involving injury or death, training accidents and other serious incidents wherein law enforcement personnel are impacted.

The peer support services provided by SCLEAP include twelve specific types of intervention including one-on-one peer support, psychological first aid, crisis management briefings, defusings, debriefings, and family support. Suicide intervention, prevention and postvention are also elements. SCLEAP provides three seminar programs to police officers: Post Critical Incident Seminar (PCIS), Post Deployment Seminar (PDS) and Sudden Traumatic Loss Seminar (STLS).

Psychiatrist support to SCLEAP includes providing education and training presentations on stress management and prevention, being a referral source for diagnostic assessment and treatment, as a resource for finding referral sources, and serving as the Clinical Director of the PCIS and PDS. The first few roles are self-explanatory and the last is a combination of educator providing blocks of instruction, clinician available for one to one consultations with attendees, data collection supervisor, and oversight for the mental health professional team.

An example with a general medical model foundation can be found in the program of the North Carolina State Highway Patrol (SHP), which partnered with the University Of North Carolina School Of Medicine in 1993 to establish a medical clinic and program. The mission of the medical program is to maintain a fit and healthy workforce. The Patrol converted a space on the SHP training academy campus for a clinic. The medical school and SHP worked with contract arrangements to provide a physician, nurse and secretary.

The SHP medical office is open Monday through Thursday for ten hours each day, and a physician and nurse are available by telephone at all times. All services are free to the employees. The activities and services of the SHP medical program are available to all employees of the SHP, approximately 2500 people; but the focus is on the occupational health of the sworn staff. Services include pre-employment and in-service physical examinations, daily walk-in and telephone consultations and urgent care, preventive medicine, and chronic disease management. The staff also supervises a cadre of Emergency Medical Technicians who respond with troopers for special assignments like hurricane responses, civil disturbances and mass casualty incidents. Many of these responses are also attended by the physicians.

"Various models of involvement can range from volunteer service with a small town agency to a full-time career with a large agency or consortium of agencies."

Obviously, pre-employment and fitness-for-duty assessments are not held confidential. However, all other services are confidential. Medical records are locked and available only to the medical staff and patients unless ordered by a court. These policies support appropriate interventions by the medical staff in critical incident stress management and assessment and management of behavior issues.

Since the inception of the SHP medical program, the emphasis on identification and management of mental health and substance use issues has evolved considerably. The SHP medical program currently includes efforts to improve stress resilience across the whole workforce as well as clinical screening for depression, PTSD, and substance use and clinical management of mental health and substance issues. These efforts include the following: Cadet and in-service training on critical incident stress, career survival, relationship issues and alcohol/substance use; Medical office screening for depression, PTSD and alcohol/substance use; Medical office counseling and medication use; Referral associations with a clinical psychologist for pre-hire and in-service fitness for duty; Referral associations across the state with mental health professionals for counseling and psychiatric care; Collaboration with the SHP chaplaincy; and Collaboration with Law Enforcement Assistance Programs in other states to provide post critical incident seminars and post military deployment seminars.

Another aspect of psychiatric support that has been adopted by progressive law enforcement departments is on-scene consultation during crisis situations. On-scene operational and immediate post-incident support to SWAT teams, hostage/crisis negotiators, officer-involved shooting incidents and serious events of civil unrest present unique challenges for a consulting psychiatrist and, in some cases, opportunities to contribute to safe resolution to life threatening events. Unfortunately, the on-call responsibilities required for response to these sorts of events of unscheduled or open-ended duration may, for some busy professionals, be impossible. Regardless, forensic psychiatrists are by nature caring, curious

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Support to Public

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and resourceful. Various models of involvement can range from volunteer service with a small town agency to a full-time career with a large agency or consortium of agencies. In any case, a proper involvement can be of great benefit to the community and a source of professional accomplishment for the psychiatrist.

So how does a forensic psychiatrist become a law enforcement consulting psychiatrist? Ideally, an agency will be seeking to fill such a position and you can secure an introduction from someone known and trusted by the senior management of that agency. Having had or currently having experience as a sworn law enforcement officer, agent, etc is of course ideal and will enable most to move more quickly and further in providing services and being called upon to do so, but it is not a requirement. You have what, in this situation, are the "basic" credentials – you are a physician and specifically a psychiatrist. Being a forensic psychiatrist gives you an understanding of, and experience working within, the criminal justice system. It is suggested that you start slowly and with a small role, building a relationship and mutual understanding of your services and their needs in much the same way as developing rapport with an individual client. If you don't have prior law enforcement experience, then learning the job and culture is critical. Unfortunately, although helpful and certainly recommended, simply reading about it and talking with personnel is unlikely to be sufficient. It will be more useful to attend and even where practical and possible to participate in their training events, meetings, and social events. It is critical to become familiar with the mission, personnel, and culture of the field in general and the specific agency you will be consulting with.

Early on in the process you need to decide what role(s) you want and which you do not and make those clear to the agency seeking your services. There are roles that create the risk of a dual agency relationship that you must work to avoid. For example, being the on call mental health professional for post incident stress management and treatment assessment and intervention carries expectations of patient-doctor confidentiality. If you are also the agency's fitness-for-duty evaluator, a conflict of interest is created. You must define your role with the agency, establish limits and boundaries, and announce all of these. A written Memorandum of Agreement or Understanding is one method if you are also a government employee and performing this function as part of that employment or a Consultation Agreement or Contract if acting as a private practice psychiatrist.

This leads to another legal issue – insurance. Who is covering you for liability insurance when performing these services? Although the agency will most likely have liability coverage for their employees through their government legal entity, it is unlikely to include medical liability coverage for a psychiatrist. If you are performing this function as part of your current full time employment then check that liability policy for coverage and ensure it extends to these duties. You will need to check your disability coverage as well if you intend to be an operational psychiatrist responding to in-progress incidents such as barricaded person, hostage taking, etc., during which you might be injured. If you are authorized to use an emergency response vehicle for responding to such incidents there is potential for injury, liability, etc., there as well. If your consulting role is limited to post events, training and education then there are fewer insurance concerns. If you will be limiting your role to clinical services such as assessments and treatment, then the traditional medical liability is likely to be sufficient, but consulting with your carrier or legal office is recommended.

Lastly, there is an opportunity for forensic psychiatrists to advance the evidence base in this specialized area. To date there is a limited depth and breadth to the empirical data underpinning the aforementioned roles and approaches. Much has been extrapolated from studies of professions with similar missions, experiences, personnel requirements and characteristics, etc such as the military; and experimental and field based studies have been increasing in number and complexity, but there is still much to be discovered. You can be a part of that advancement of the science through sharing with research centers data from your provision of services and directly by initiating studies in your settings.

In summary, the law enforcement community can benefit from a variety of services provided by forensic psychiatrists. There are multiple roles one can fill from educational to clinical to operational to research. Decide your role, learn your population, their mission and culture, and enjoy the rewarding work of serving those who serve the community.

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AAPL is now accepting applications for the 2018 Rappeport Fellowship. Deadline for submissions is April 1, 2018. Details can be found online at **www.aapl.org**. Contact the AAPL Executive Office for more information at **office@aapl.org** or by telephone at **800-331-1389**.

Responses to the New Executive Orders on Immigration

Karen B. Rosenbaum, MD and Maya Prabhu, MD
Cross Cultural Committee and Liaison with Forensic Sciences Committee

The Cross Cultural Committee and Liaison with Forensic Sciences Committee jointly presented a panel at the 2017 AAPL Annual Meeting held in Denver, Colorado entitled Responses to the New Executive Orders on Immigration. One of the goals of the Liaison with Forensic Sciences Committee is to facilitate collaboration between forensic psychiatrists and forensic scientists from different disciplines. This panel explicated the current Administration's evolving policies towards refugees and immigrants; but it also served as a forum to explore the impact of these policies on the medical community and our patients.

The panel opened with Attorney Lauren Groth, a civil litigator in Boulder, Colorado. Ms. Groth is also a volunteer attorney with the International Refugee Assistance Project and was one of the first attorneys to respond to the January 27, 2017 Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States," otherwise known as the first "Travel Ban." Ms. Groth provided a synopsis of each of the iterations of the Travel Ban and resultant litigation. In addition Ms. Groth described the overwhelming response of the legal community in assisting clients; because of the confusion about the scope of the initial Executive Order, many persons with legal right of entry, including permanent resident status, were nonetheless stopped at US borders. Legal advocacy efforts included faxing appeals court "stays" on the ban to clients abroad so that they could present them to customs and immigration officials upon landing at the US; arranging for entry into airports that were considered to be less hostile than others; and arranging transportation on specific airlines which were less likely than others to deny boarding to persons who might be affected.

Dr. Maya Prabhu continued the discussion of the Executive Orders by considering their impact on medical students, trainees and physicians. The Educational Commission for Foreign Medical Graduates (ECFMG) has reported that approximately one quarter of all practicing physicians in the US are international medical graduates (IMGs). The travel ban raised concerns that foreign students and trainees from countries on the (fluctuating) travel ban list would not be able to complete their training if visas could not be renewed; nor was it clear how programs and students would approach the Match List if there was continued uncertainty about foreign nationals' ability to stay in the US. Physicians on employment visas also faced uncertainty about remaining in the US, even in underserved rural and inner-city areas, which often rely on foreign medical graduates. Dr. Prabhu also contemplated apparent changes in Immigration and Customs Enforcement practices which may result in courtrooms, hospitals and schools becoming sites for arrest and detention.

Dr. Varendra Gosein discussed a longstanding model of collaboration between psychiatrists and attorneys based on his experience as a resident working with the Program for Survivors of Torture. Dr. Gosein reviewed the criteria for asylum in the US which falls under the Immigration and Nationality Act of 1952 and the roles for psychiatrists in asylum litigation. During his training, Dr. Gosein treated a Tibetan Buddhist who had applied for asylum; the patient had been previously been detained and mistreated for distributing photos of the Panchen Lama and his membership in a Tibetan Independence group. Dr. Gosein described the elements of the psychiatric evaluation, his role as a fact witness in the asylum hearings and the cross-cultural complexities of working with Tibetan asylum seekers in groups. Dr. Gosein noted that the current Administration's ban on entry of all refugees for 120 days extended even to Tibetans, a fact which was often lost in the public focus on the Muslim-majority county ban.

Dr. Barry Roth stepped back from the discussion of the Executive Orders to consider the work of physicians in developing the Istanbul Protocol, an international benchmark for forensic investigation and documentation. Dr. Roth commented at length on the fundamental intent of torture to disrupt the norms of a functioning civil society and the unique skill set of health professionals to articulate this to a broad audience. As an example of domestic work in this arena, Dr. Roth described his coordination of 19 experts in a SCOTUS Amicus Brief in the matter of *Ziglar v. Abbasi*. The case arose out of the mass detentions of persons in the US following September 11, 2001; rather than being treated as potential immigration detainees, the mostly Muslim, Arab and South-Asian men were treated as terrorism suspects and subject to physical violence and verbal abuse. Ultimately, the Supreme Court denied applicants the right to claim damages from former federal officials for constitutional violations; nonetheless, Dr. Roth continued to call for medical professionals to apply their skills and knowledge to protect all persons from inflicted abuse.

The last speaker was Dr. Karen Rosenbaum who discussed the possible repeal of DACA, the Obama-era program, which allows approximately 800,000 persons who had been brought to the US without documentation as children a means to stay in the US lawfully. Unknown to many, there are approximately 70 medical students and residents in the DACA program. Both the AMA and the APA have issued statements in support of continuing DACA, noting the impact on physician supply. These statements also acknowledged the deleterious effects of returning people

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Jagannathan Srinivasaraghavan, MD
AAPL's Ambassador to the World

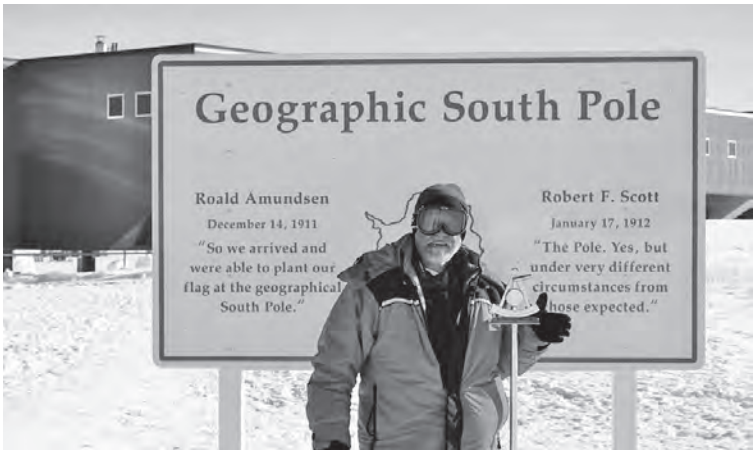
Anna Weissman MD

Given his distinguished career, you might be surprised to learn that Dr. Jagannathan Srinivasaraghavan became a forensic psychiatrist by accident. Dr. Van, as he is known to AAPL members, is Professor Emeritus of Psychiatry at the Southern Illinois University School of Medicine and an Honorary Fellow of the International Academy of Law and Mental Health (IALMH). He has served as the Representative of Illinois to the Assembly of the APA and Secretary of the Section on Quality Assurance of the World Psychiatric Association. Now, for the second time, he completes a term as Vice President of AAPL.

Dr. Van had considerable genetic loading and environmental exposure for a forensic career, coming from a family with four generations of lawyers and a physician father. But it was not until he graduated from residency and worked as an attending at the VA Medical Center in North Chicago that Dr. Van attended his first AAPL meeting.

The year was 1984 and the weather in Chicago was predictably cold. The meeting, on the other hand, was held in the somewhat more temperate Bahamas; Dr. Van was easily convinced to attend. He enjoyed the meeting so much that he began attending regularly and became a member. He presented at the Annual Meeting for the first time in 1994 and has since shared his work frequently at AAPL, the APA, the Indian Psychiatric Society, and the World Psychiatric Association.

Since his fateful trip to the Bahamas, Dr. Van has made a profession of his global passion for forensic psychiatry. All told, he has presented his work in 35 countries. While many of the countries he visits do not yet have the resources to support forensic psychiatry as a formal subspecialty, Dr. Van serves as a diplomat for the field. He has built bridges across the academic world, visiting forensic facilities from Cuba to Russia. As a member of the Board of Trustees and a Senior Fellow of the IALMH, Dr. Van launched their first Asia Pacific Conference. He has facilitated multiple collaborations between India and the US and personally mentors psychiatrists from Iran to Bangalore.



Dr. Van's passion for global forensic psychiatry goes hand in hand with his adventurous spirit. Growing up in India, his father, a doctor in Preventive Medicine, worked for the railways. As a result, he was able to ride the train all over India in a special carriage. At his retirement, Dr. Van's father remarked, "I spent my whole life working for the railways and my son used all my free passes!"

Since his boyhood riding the train, Dr. Van has become one of the most traveled people in the world. He has been to all 193 member states of the United Nations and has visited 321 of the 325 countries and territories officially recognized by the Travelers' Century Club (of which his wife is also a member).

He is currently ranked as the sixth top traveler in the world on the website http://mosttraveledpeople.com/. Dr. Van has climbed Mount Kilimanjaro, ascended to Everest Base Camp, and in 1985 was the first to plant the Indian flag at the North Pole. He is no stranger to conflict zones; he had to hire two bodyguards when he traveled to war-torn Mogadishu.

Dr. Van travels because he "loves meeting new people, knowing more about cultures, and finding new places." While many of the countries he has visited have very little in the way of money and other resources, "what they do with what they have is phenomenal." When he isn't hopping time zones or receiving awards (including APA's George Tarjan Award for mentoring International Medical Graduates, APA's Bruno Lima Award in Disaster Psychiatry, and AAPL's own Red Apple Award), Dr. Van calls Carbondale, Illinois home. During his tenure as Vice President and beyond, we know he will continue to serve AAPL in his unofficial role: forensic psychiatry's Ambassador to the World.

In Re Gault

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hearsay – such as the report of the policeman who did not witness the events – contravenes the purposes underlying the sixth amendment right of confrontation."

The Court reiterated the findings of *Kent v. United States,* 383 U.S. 541 (1966) that a waiver hearing must fulfill the essentials of due process. The decision of the U.S. Supreme Court defined due process as requiring written notification to the child and parents as quickly as possible and time for them to prepare for a hearing; at the hearing, the child and parents must be advised of their right to counsel, including a court-appointed attorney if they cannot afford one; and the Fifth and Sixth Amendments apply, including the right of cross-examination.

A Landmark Case indeed. However, that was not the end of the story. Gerald Gault had ambitions of military service. In August of 1968 an army recruiter sent a form to the Gila County Juvenile Court. Did Gerald Gault have a record? Yes, a probation officer responded. The officer went into detail about Gerald's legal history. He told the recruiter that Gerald had a record of delinquency. His file was still active. He had never been found not guilty, Thus, he was prohibited from enlisting.

Then things got complicated. In 1968, Gerald's parents petitioned the Gila County Court. But the county probation officer said the U.S. Supreme Court had not mandated that the original case be heard in that county. He was correct. The parents' attorney, Amelia Lewis, filed a motion before the Arizona Supreme Court, asking that the hearing be held in Gila County. It was denied.

The Arizona Supreme Court then sent the case to the Maricopa Superior Court, in Phoenix. However, since state law prohibited appeals in juvenile cases, the case went nowhere.

Nevertheless, Gerald *did* serve in the Army and retired after 23 years. In 2014, his entire case was reviewed by the Gila County Juvenile Court. Urged by Gerald's parents and two *amicus* counsel, the court agreed to hear the case again. This time, the court found: "The determination shown by Paul and Marjorie Gault to vindicate their son in the courts, still unfulfilled, is reason alone to act now – even a half-century late."

On August 6, 2014, the original order declaring Gerald a delinquent and sending him to the Arizona Industrial school, was finally vacated. Arizona, the land of contrasts and surprises, finally did the right thing.

Criminal Behavior

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Schedule for AAPL Semiannual Meeting 2018

Saturday, May 5, 2018
8:00 AM –9:30 AM - Isaac Ray Award/Guttmacher Award and Lecture
10:00 AM-1:00 PM - AAPL Committee meetings
1:30 PM-4:30 PM - Presidential Symposium
5:00 PM -6:30 PM - AAPL Committee meetings
6:30 PM - Business Meeting, AAPL Reception to follow

Sunday, May 6, 2018
8 AM-1 PM - AAPL Council
After 1 PM – Updates from Council on Psychiatry and Law

Fake News

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overvalued idea, and a delusion. The spread of fake news also poses the possibility for further clarification on the categorization and the jurisprudence in cases where criminal action was taken based on misinformation or disinformation within a cultural meme.

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Responses

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to countries in which they may have never lived, not just on the "Dreamers" who may be required to leave, but for those they will leave behind. Dr. Rosenbaum opened the floor discussion by asking the audience to consider whether AAPL needed to be more active in responding to these various executive orders; and wondering how individual physicians might find the line between personal advocacy and professional impartiality.

The cross-cultural committee will continue to follow the Executive Orders and emerging laws relating to immigrant entry. Forensic psychiatrists have long had a relationship with law school clinics and immigration lawyers, seeking to help attorneys and judges understand asylum claims, experiences of flight, trauma and persecution. As the world continues to face protracted conflicts and increasing levels of displacement, these evaluations will continue to be important as will our response a profession. Equally challenging will be how we maintain our role as impartial experts when our own colleagues, patients and selves might also be affected.

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