

AAPL Newsletter

American Academy of Psychiatry and the Law



Spring 2022 • Vol. 47, No. 2

The 53rd Annual AAPL Program Preview of The Whole Truth: Recognizing Gender and Culture in Forensic Psychiatry

Karen B. Rosenbaum, MD and Ryan Hall, MD



Photo Credit: Arun Kuchibhotla

The theme chosen by AAPL President, Dr. Susan Hatters Friedman, for the 53rd Annual AAPL conference from October 27-October 30, 2022 in New Orleans is “The Whole Truth: Recognizing Gender and Culture in Forensic Psychiatry.” This theme will be salient throughout the program, including in the work of our three esteemed Luncheon speakers and our Thursday evening distinguished panel presentation.

Professor Bryan Stevenson is an attorney, New York University law professor, and the author of the book, *Just Mercy*, A Story of Justice and Redemption (1). His book was

made into the 2019 film *Just Mercy*, directed by Destin Daniel Cretton, which we highly recommend attendees watch prior to the meeting. In the film, an early-career Bryan Stevenson is played by Michael B. Jordan, who fights to prove the innocence of Walter McMillian (played by Jamie Foxx), who is on death row for a murder he did not commit. Mr. Stevenson founded the Equal Justice Initiative (EJI) in 1989, a non-profit organization that provides legal counsel to people who have been unjustly convicted, unfairly sentenced, or abused while incarcerated. (2) Professor Stevenson graduated from Harvard in 1985 with both a master’s degree in public policy from the Kennedy School of Government and a JD from the School of Law. He joined the faculty at New York University School of Law in 1998. According to his impressive biography at the NYU school of law:

Stevenson’s work has won him national acclaim. In 1995, he was awarded the prestigious MacArthur Fellowship Award Prize. He is also a 1989 recipient of the Reebok Human Rights Award, the 1991 ACLU National Medal of Liberty, and in 1996, he was named the Public Interest Lawyer of the Year by the National Association of Public Interest Lawyers. In 2000, Stevenson received the Olaf Palme Prize in Stockholm, Sweden for international human rights and in 2004, he received the Award for Courageous Advocacy from the American College of Trial Lawyers and the

Lawyer for the People Award from the National Lawyers Guild. In 2006, NYU presented Stevenson with its Distinguished Teaching Award. He has also received honorary degrees from several universities, including Harvard, Yale, Princeton, the University of Pennsylvania, and Georgetown University School of Law. Stevenson has served as a visiting professor of law at the University of Michigan School of Law. He has also published several widely disseminated manuals on capital litigation and written extensively on criminal justice, capital punishment and civil rights issues. He is also the author of the *New York Times* Bestseller *Just Mercy*, which won the 2015 Carnegie Medal for Best Non-Fiction, the Dayton Literary Peace Prize, and the NAACP Image Award for Best Non-Fiction.

Being on the Law School faculty, Stevenson says, “offers an excellent opportunity to explore ways of training law students to consider the legal needs of the poor and to effectively serve the indigent in resource-deprived regions such as the American deep south”. (3)

We are excited to have this distinguished and accomplished author, professor, and humanitarian speak to us.

Professor Ann C. Wolbert Burgess, also a Luncheon speaker, is a Boston College Professor of forensic nursing and the recipient of numerous awards. She has a Doctor of Nursing Science degree. As a pioneer of forensic behavioral profiling in the FBI, the character of Dr. Wendy Carr in the Netflix series, *Mindhunter*, is based on her. (4) Like this character, Professor Burgess worked with John Douglas and Robert Ressler, FBI agents in the Behavioral Science

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Manuscripts are invited for publication in the Newsletter. They should be submitted to the editor via email to NewsletterEditor@aapl.org

The Newsletter is published in Winter (deadline for submission is November 15), Spring (deadline March 1), and Fall (deadline July 1).

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AAPL PROGRAM PREVIEW

Unit, to develop research in criminal profiling. (5) She is the author of four books, most recently *A Killer by Design: Murderers, Mindhunters, and my Quest to Decipher the Criminal Mind*. (6) Professor Burgess describes in this autobiographical account one of her main motivations for her work:

For me, it's always been about the victims. They are the reason I persist. They are the reason I stared down the darkness, time and time again. They are the tragic human cost of a serial killer's self-discovery, the helpless victims of chance and circumstance. They are living, breathing bodies of boundless possibility reduced to headlines and statistics. And although many of their names have been lost to history or relegated to footnotes in the retellings of serial killers and their crimes, I will never forget a single one. (Ref. 6, p. 291)

Our third distinguished speaker, Dr. Gary Beven, is the Chief of Aerospace Psychiatry at the NASA Johnson Space Center where he has worked since 2005. The longest tenured aerospace psychiatrist in NASA's history, Dr. Beven has been the assigned behavioral health and performance lead for 45 International Space Station (ISS) expeditions and worked directly with multiple long-duration mission crewmembers serving on the ISS. Dr. Beven's expertise includes astronaut selection, training, spaceflight mission preparation, and preflight/inflight/postflight assessment of astronauts assigned to spaceflight missions. Dr. Beven is also the Chief of the Space and Occupational Medicine Branch at the Johnson Space Center, providing medical leadership to NASA flight surgeons and other medical professionals who serve the needs of the NASA Astronaut Corps, and is responsible for medical operations and behavioral health support of the NASA human spaceflight program. Dr. Beven graduated from the Case Western Reserve University School of Medicine, interned at the Cleve-

land Clinic, underwent psychiatry residency training at the University of Colorado Health Sciences Center, and performed a fellowship in forensic psychiatry at the University of Florida College of Medicine. He is board-certified in general and forensic psychiatry. Dr. Beven is also a retired US Air Force flight surgeon with 22 years of military service. He continues to practice forensic and correctional psychiatry at Houston's Harris County Jail and within the Texas Department of Criminal Justice for UTMB Correctional Managed Care. In his lunch talk, Dr. Beven will discuss "NASA's Behavioral Health and Performance Services for Long Duration Spaceflight Missions," including the topics of astronaut selection, a history of space station development and long duration spaceflight, and how NASA optimizes the behavioral health and performance of astronauts during spaceflight missions, including one-year missions on the ISS.

For our Thursday evening event, we are thrilled to have Tulane Assistant Professor of Psychiatry and Internal Medicine, Dr. James B. McConville, discuss a uniquely New Orleans serial killer case he was involved in. Dr. McConville obtained his medical degree from the University of Iowa and completed his residency and fellowship at Tulane. His talk will fit well into the theme of practicing psychiatry in a unique and culturally diverse city such as New Orleans, as well as aspects of how our field lends itself to literary influences and interpretation. We expect that Dr. McConville as well as the attorneys involved in the case will be discussing their experience with Joseph Brant, an individual with a known mental health history. Brant, who was already serving a life sentence for a second-degree murder, disclosed to his attorney that he had committed multiple murders in post-Hurricane Katrina New Orleans. This led to somewhat of a 'whodunit' situation suitable for a modern-day mystery novel. There was the question of whether the murders were actually committed by Mr. Brant, or if his confession was delusional, given

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Pop Culture, Stigma, and Our Role as Forensic Psychiatrists

Susan Hatters Friedman, MD



I've long had an interest in pop culture. As a teenage tenor sax player, it bothered me a little that in *St. Elmo's Fire*, Rob Lowe's hands and mouth

were not remotely doing the right things when his character Billy played sax. But I rationalized that it wasn't important. We've all heard rock-n-roll saxophones before, and we know that he is just an actor.

However, the general public is more likely to have seen forensic psychiatrists in film than in real life. Psychiatry happens behind closed doors. While Dr. Huang in *Law & Order* and Dr. Melfi in *The Sopranos* are rare positive examples of psychiatrists, there are so many fictional examples of bad psychiatrists. Our roles in fiction paint a picture that can be perceived by the viewer or reader as reality. It is challenging for someone outside our field to recognize where fiction ends and reality begins.

While psychiatry's portrayal in pop culture may seem an inconsequential topic, there is indeed a serious side about how we and our patients are represented. Mental illness in popular fiction is on some level a representation of what the lay community thinks about mental illness. And in turn, people get a lot of their information about mental illness from television and the movies. Negative portrayals of forensic psychiatrists and persons with mental illness can further perpetuate stigma and a subsequent lack of help-seeking behavior. We as a profession should be doing more to educate.

From the earliest days of film, psychiatrists have featured prominently—and negatively. In the 1920 silent film *The Cabinet of Dr. Caligari*, the asylum doctor sends a sleepwalker to commit murders. Popular horror films

to this day feature evil psychiatrists who wield ECT as a weapon, and patients who commit random acts of violence. (1)

A decade ago, we described the portrayals of forensic psychiatrists in fiction and film as including: Dr. Evils, Professors, Hired Guns, Activists, and Jacks- (or Jills-) of All Trades. (2) Recall that Dr. Richman in *Psycho* (a 1959 novel before it was a 1960 Alfred Hitchcock film) was a forensic psychiatrist character who needed to help explain Norman Bates's mind to the viewer.

Many other films featuring forensic psychiatrists were also bestselling novels first, for example, *Silence of the Lambs* and *The Girl with the Dragon Tattoo*. The most recognizable forensic psychiatrist is Hannibal 'the Cannibal' Lecter. While—of course—the general reader or viewer does not think forensic psychiatrists are cannibals, they may not realize what other lines are crossed. Lisbeth Salander, the titular girl with the dragon tattoo, is a former victim of an evil forensic psychiatrist. Lisbeth has a guardian despite being a genius computer hacker, and the lay viewer may wonder how different her situation is from that of recent real-world cases in the media.

Dating back to Golden Age detective fiction, Agatha Christie's cast of characters included an alienist who worked alongside Hercule Poirot. In crime fiction, dual role issues abound, as do boundary problems in general. The lay viewer may not recognize that we have ethics codes. Our fictional counterparts are involved in police investigations, report their treatment patients to the police unethically, hypnotize their evaluatees, become enmeshed with defendants, appear to co-exist in treatment roles and evaluation roles, and in some cases are presented as the savior of the defendant.

Joker (2019) was the first R-rated film to gross over \$1 billion. So even

if we discard it as 'just a comic', its consequences are not something that we can ignore. In *Joker*, the titular character appears to 'get away with it all' due to a bogus mental illness defense. (3)

Can a film set in the Batman world really effect the public's thinking about mental illness?

The answer is a resounding 'yes.'

A New Zealand study randomly assigned theater-goers to watch *Joker* or *Terminator: Dark Fate* and administered a scale considering prejudice toward those with mental illness. They found that watching *Joker* was associated with an increase in prejudice on the scale. (4)

Harley Quinn is a female forensic psychiatrist in comics. Ryan Hall and I described the large number of forensic psychiatrists found in comics, and how they are often the villains. (5) As we wrote, these negative characterizations began in the era of a forensic psychiatrist's 1954 Senate subcommittee testimony about the evils of comic books.

Popular culture shapes public opinion, and there is a potential for further stigmatization or for improvements. In pop culture, people with mental illness are often objects of mockery, as well as the perpetrators of violence. Yet, media used effectively could help reduce stigma and increase help-seeking. Accurate portrayals of characters may lessen stigma and increase empathy.

Real-world improvements have come out of Hollywood. For example, Mariska Hargitay, who starred as a sex crimes detective in the TV series *Law & Order: Special Victims Unit*, "was awakened to the weight that survivors of sexual assault, domestic violence and child abuse carry—the weight of shame, pain, fear, darkness, judgment and isolation." (6) She has subsequently worked to help survivors, to help end rape kit backlogs, and founded the Joyful Heart Foundation—to transform the response to violence and support survivors in their healing.

As forensic psychiatrists, part of our role is education. We educate trainees

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Dr. Alan Stone, Constructive Critic of Forensic Psychiatry

Jeffrey S. Janofsky, MD



Dr. Alan Stone died on January 23, 2022 at his home in Cambridge, Massachusetts. (1) He was 92 years old. Dr. Stone was a Professor of

Psychiatry and Law at Harvard, where he taught generations of attorneys and physicians interested in mental health law. He was a past APA President, and founder, past chair, and member of the APA Committee on Judicial Action (CJA), the APA component responsible for thinking about and writing appellate court amicus briefs.

Dr. Stone was not an AAPL member. He was clear that he was interested in psychiatry and law and not forensic psychiatry. He described his thinking in the classic paper, “The Ethical Boundaries of Forensic Psychiatry: A View from the Ivory Tower”. (2) His challenging thoughts helped AAPL clarify its mission and Ethics Code. Twenty-five years later, an entire issue of JAAPL was devoted to different authors’ perspectives on how Dr. Stone had influenced forensic psychiatry. (3)

I got to know Dr. Stone through his work on CJA. His input was always helpful in crafting policy and amicus language, even when he did not personally agree with the result.

I have asked two AAPL members who were students of Dr. Stone at Harvard to provide their thoughts:

Paul Appelbaum wrote:

Alan Stone is one of the very few people about whom I can say that my life would have been very different if I had not met them. I met Alan at the end of my first week in medical school, having chosen his course on Psychiatry and Law as my behavioral science elective. I previously had no idea that psychiatry and

law was a field of study or even what the course would cover but given an interest in law and a vague sense that psychiatry might be my specialty of choice, I signed up. Alan was a splendid and inspiring teacher. By the end of each class, I found my heart beating faster than when it began, and by the end of the semester, I was determined to find a way to make my career in this field.

What was it about Alan that could inspire that degree of excitement? He had an ability to identify interesting questions—for example, what was it that gave a state the power to hospitalize a person with mental illness involuntarily—and then to explore all possible answers (including that nothing gave the state the power to do so) with rigor and humor. He was already teaching collaboratively with Alan Dershowitz at Harvard Law School, which would soon become his academic home for the rest of his career, so had absorbed the law school professor’s technique of assuming unpopular positions and challenging students to attack them. It was as different as could be from the rote memorization of gross anatomy, organ system physiology, and genetics that filled the rest of the week. I was hooked.

Nor was that course the last time Alan played a key role in the development of my career. He arranged for me to take classes at Harvard Law School during my final year of residency, then a very unusual opportunity. And as I was finishing residency and thinking about the next steps in my career, it was Alan who said to me, “Go work with Loren Roth in Pittsburgh for five years

and afterwards you’ll be able to do anything you want.” I spent just over four years with Loren, then the leading empirical researcher in law and psychiatry, and they were formative for my career.

Over time, of course, my relationship with Alan changed from student and mentee to colleague. We had different views about many things, including the ethics of forensic psychiatry. But he was always willing to listen and engage respectfully, a model I try to follow when my trainees challenge my perspectives. Alan was an immensely cultured man, who loved literature, theater, and arthouse cinema. We are all poorer for losing him.

May his memory be for a blessing.

Ken Hoge wrote:

When I met Alan Stone, he was already a towering figure. Through the 1970s and into the 1980s he led the field of psychiatry through what we now call the reform era. Psychiatrists felt under siege by a legal system that seemed determined to end involuntary treatment and to dismantle psychiatric institutions. Some felt that the profession could not withstand the legal and moral challenges raised by advocates. Alan, a residency training director, psychoanalyst, and researcher, was drawn into the center of the storm. At first, he remained in the ivory tower, teaching law and psychiatry at Harvard Law School. He then became active in the APA, which had remained on the sidelines in important early legal cases, such as *Wyatt v. Stickney*. Alan argued that the APA should take an active role in responding to issues arising in the legal arena. His efforts resulted in the creation of the current APA structure: a committee to assume the responsibility for formulating APA views for amicus curiae briefs

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It's Our Ethical Obligation to Learn About Ethics

Joseph R. Simpson, MD, PhD



For many psychiatrists, the word “ethics” brings to mind big or obvious concepts – for example, prohibitions such as not starting a romantic relationship or

business partnership with a patient, or, for forensic psychiatrists, not agreeing to a contingency arrangement in which you will only be paid if the side that hired you wins a judgment. A forensic psychiatrist might also think of weighty moral questions like working on a death penalty case or in another controversial area with political implications. But there are actually many different aspects of psychiatric practice where ethics questions that are not so momentous arise with regularity. To cite a few examples of the types of questions that come up in the everyday life of a psychiatrist, in my career I have been asked to:

- Treat someone I also work with
- Not document the past drug misuse of a patient who is a medical professional
- Have the police arrest a patient for assaulting staff on an inpatient unit
- Treat more than one patient in a family
- Provide a patient a copy of the paperwork I sent to their disability insurance company
- Write a note for time off because a patient's employer would not approve their vacation request
- Write a letter stating that a patient can't take a class from a specific professor
- Continue communicating socially with a former patient.

Without a doubt many of you have encountered situations like these.

Such scenarios can place ethical principles we endeavor to follow in conflict with each other. For example, there is a tension between the principle of beneficence towards a patient whose employer is behaving badly (and quite probably violating employment law) by refusing vacation requests and the principle of honesty – i.e., not falsely providing a medical excuse from work.

How about a few more examples? Some psychiatrists have a blanket policy against filling out any type of disability paperwork for their patients. Some elect never to prescribe certain classes of medications, even for their FDA indication, e.g., stimulants in ADHD. And in the era of social media, many psychiatrists are wondering how to deal with negative reviews on Yelp! and other rating services or contemplating whether to “Google” their patients or prospective patients.

We forensic psychiatrists may think we are fairly well attuned to ethics concerns by virtue of our specialized training. But the 21st Century is quite obviously an era of rapid change for the entire field of health care, including both clinical and forensic psychiatry. Technological advances, political controversies, growing use of non-MD mental health practitioners, issues of healthcare parity and coverage, and a more litigious society in general are swirling together to create a very complicated ethics landscape. It can be daunting to try to stay current with all of the changes in the field.

I recently stumbled across some useful ethics resources on the American Psychiatric Association website, which has an entire section devoted to ethics (<https://www.psychiatry.org/psychiatrists/practice/ethics>). The section is maintained by the APA's Ethics Committee, which boasts a large contingent of AAPL members. The section includes much more than

just the “Principle of Medical Ethics with Annotations Especially Applicable to Psychiatry” that most of us are familiar with, from our residency training if nothing else. The APA has been keeping up to date, and the section includes the Ethics Committee's opinions on COVID-19-related questions; a Commentary “meant to provide practical guidance for managing ethical dilemmas that come up in day-to-day practice;” and an extensive, nearly 100-page collection of Ethics Committee answers to members' real-life ethics questions, some received and answered as recently as 2021. This document, entitled “The Opinions of the APA Ethics Committee,” is divided into the following sections: Boundary and Dual Relationship Issues; Business Practices and Ancillary Professional Activities; Child and Adolescent Psychiatry (including Child Custody and School Issues); Confidentiality and Informed Consent; Duty to Report and Professional Competency Issues; Ethics Procedures; Forensic Issues; Interaction with Other Professionals; Managed Care; Military and Other Government Agencies; Payment, Fee and Fee Splitting Issues; Pharmaceuticals; Philanthropy, Gifts and Wills; Practice Issues; Professional Listings, Announcements; Referral Practices; Research and Scholarly Activities; and Resident, Student and Other Trainee Issues. As this list indicates, it is a very wide-ranging document. The questions tend to be quite thorny, and the answers detailed and highly instructive. I encourage every medical student, resident, fellow, and practicing psychiatrist with a clinical or forensic practice to take a look. I would be quite surprised if you don't encounter questions you never thought of before.

Boosting your knowledge of ethical standards and principles will help you practice ethically in all professional situations, which will minimize risk and reduce stress. The end result: increased job satisfaction and reduced burnout – goals everyone can agree on. ☺

Ask the Experts

Neil S. Kaye, MD, DLFAPA

Graham Glancy, MB, ChB, FRC Psych, FRCP (C)

Neil S. Kaye and Graham 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: I have been hired by the defense (insurer) to review a case. The person crashed his car, claiming that he did so on purpose to allow him to be picked up by the spacemen on a passing comet and that so doing “would save the world as is written in scripture.” In the accident, he seriously injured a pedestrian as well. The man was grossly psychotic at the time and has a long history of schizophrenia and was off his medications. The questions asked are: Did he have a “conscious understanding of what he was doing,” was this an “intentional act,” and if he did purposely crash his car (even if it was in the service of a delusion), should he be responsible for injuring the pedestrian? Can I get your expert thoughts?



A. Kaye:

Wow! I have done a number of analogous cases. Let’s unpack the real issues. Remember, it’s always best to clarify the question you are being asked. I find it best to make certain that I understand the standard being used to decide the issue. This is not a criminal case, and while it might be considered “civil,” really, it’s an insurance case, and decisions are based on the legal interpretation of the insurance (contract) that covers this act/event. The language in this policy seems to state that

coverage can be denied if the act was “intentional” and the perpetrator had a “conscious understanding” of what he was doing.

The “facts” as described include that he intentionally crashed his car, so he clearly knew what he wanted to do and followed through. One could argue that his “intent” was to be picked up by the space aliens and thus save the world, but in my experience, that argument is only likely to work if he denies that he deliberately crashed the car. Similarly, as it is foreseeable that crashing a car could easily injure the pedestrian, I would expect that he is responsible for that action as well. That might be a criminal act, and I can’t guess as to whether or not his auto policy covers foreseeable injuries to a third party, although it may well have such a clause. This could lead to a situation where his insurance won’t pay him for his own injury/loss, but would cover the pedestrian’s costs, both arising from the same incident.

In some of these cases, I have suggested that the insurer may want to raise the issue of whether this person’s care (often intensive community treatment via public sector) was within the standard of care, as there may be an associated issue of liability that they haven’t considered.

As for evaluating the individual, I doubt that it is likely to be of benefit, in that their ability to accurately remember what they did and their reasoning while in such a psychotic state is unreliable and subject to significant distortion. The police accident investigation report and the medical records immediately prior to the incident and in the emergency room immediately after may be the better sources. At the same time, you can be criticized for not doing an interview, so often this will be done merely to meet the ethical expectation and to satisfy outside interests.



A. Glancy:

When an expert is retained by the defense in a civil action this most often entails a third-party insurance company

that is litigating a case on the basis that most insurance companies have an exclusionary clause that states that they are not liable if the act was “the product of an intentional act.” It is, from a non-lawyer’s point of view, understandable that insurance companies would want to prevent a person from signing one day to insure their house for \$1 million, only to set it on fire the next day and claim the insurance. Former Canadian Supreme Court Justice Frank Iacobucci, also former dean of law and former president of the University of Toronto, put it this way: “The insurance system is for fortuitous, contingent risks, losses unforeseen or accidental. Therefore intentional acts are generally not covered” (Ref. 1, para. 67–71).

I have been involved in a number of these cases, mainly involving a person setting a house on fire. The legal question generally comes down to whether this act was motivated by factors inherent in a mental disorder with which the individual may have been diagnosed. This might include, for instance, a person with schizophrenia, experiencing delusions and hallucinations, setting fire to a house to rid the house of some delusional spirits or agents. Another scenario that I have come across, and is reported in the literature, is when a person sets a house on fire in order to effect their own suicide. The question comes down to whether the act of arson is an intentional act. Since there are frequently large sums of money involved, these cases may be vigorously litigated. From a forensic psychiatric point of view, they can be both challenging and intellectually stimulating.

In the case noted above, the member should ask for access to the person involved so as to be consistent with the ethics of AAPL. (2) It may well be they are not allowed access to the

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Ask the Experts

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person, and therefore a file review is ethically acceptable and the only recourse. If you are allowed access, a full not-guilty-by-reason-of-insanity (NGRI) assessment should be completed. (3) This would include personal interviews, collateral information from relatives and acquaintances, previous medical and psychiatric records, personal records, custodial records, police interviews, and review of the full police disclosure file. As in any insanity defense evaluation, consideration should be given to the use of psychological testing, brain imaging, and other special procedures relevant to the case.

The next task is to consult with the retaining attorney regarding a number of questions. First, it will be necessary to review the policy and the wording of the exclusionary clause. Second, it will be important for you and the attorney to review the relevant law in the particular jurisdiction. Generally speaking, as forensic psychiatrists, we are most familiar with the interpretation of the criminal laws governing the NGRI defense in a particular jurisdiction. When I first began doing these cases, I was surprised to discover that civil law approaches this matter quite differently. In Ontario, although the law is administered through the province of Ontario, we are governed by a common Criminal Code of Canada, which sets out the law. We have a modified M’Naghten law, which basically substitutes appreciation for knowing (the nature and quality of the act); it also includes the concept of knowing the act was wrong. This has been interpreted as being able to apply a rational decision-making process at the time of the act. (4).

In civil law, however, a much stricter application has been taken. In the case of *Darch Estate v. Farmers Mutual Insurance Co.* (2011), (5) Mr. Darch set fire to the house where he had resided with his parents all his life. He was diagnosed as suffering from a form of schizophrenia, cannabis use disorder, and possibly a

traumatic brain injury. He was found not criminally responsible due to mental disorder in criminal court. The judge in the civil case said that the test is whether he “appreciated the nature and consequences of the act.” Note that this is different from the wording of the Criminal Code, which says “appreciate the nature and quality of the act.” The judge explained that this was in the sense that Mr. Darch knew the physical aspect of what he was doing and knew what would flow from these actions. He noted that the exclusionary clause denied the claim if the act was intentional. He took the interpretation of intent from a previous case (*Whaley v Cartusiano*, 1987 [6]), which stated that intent should be given the ordinary and popular meaning or the common usage of the word. In the case of *Whaley*, the defendant had argued with his wife and then walked across the street and shot a neighbor whom he did not know. Even though he was found not guilty by reason of insanity, as was the law at that time, it was found that the exclusionary clause applied. In *Darch*, as we have discussed above, even though the defendant was suffering from delusions and hallucinations when he set the fire, it was concluded that he knew the physical consequences of the act. Alluding to the final clause of the insanity laws, it was noted that in civil law, the court was not concerned with whether Mr. Darch knew the act was wrong, since this goes to the morality or apportioning of blame.

I hope I have not bored readers with this review of Ontario law. The law will likely be interpreted differently in each jurisdiction, and may well be interpreted differently in civil and insurance law than it is in criminal law. It is incumbent upon the forensic psychiatrist to realize this and acquaint themselves with the law in their particular jurisdiction.

Take Home Points:

Remember to read the fine print in any case involving insurance claims and to focus on the section where terms are defined. Make sure you understand the question being asked and the standard being used by the trier of

fact. A narrow and carefully-tailored opinion is often best in a complex case. ☩

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- (2) Ethics Guidelines for the Practice of Forensic Psychiatry. American Academy of Psychiatry and the Law; 2005.
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- (4) Glancy G, Regehr C. Canadian Landmark Cases in Forensic Mental Health. University of Toronto Press; 2020
- (5) Darch Estate v Farmers Mutual Insurance Co., OJ 2971 (2011)
- (6) Whaley v Cartusiano, OJ 2688 (1987)

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his disturbed mental state at the time they were disclosed. The truth was difficult to uncover, given the amount of time that had elapsed, as well as the diminished ability to reconstruct factual information and obtain records after Katrina. The presentation will address the legal and medical ethics involved, the question of “Mad vs. Bad” when it came to the crime, and whether or not the confession was voluntary given Mr. Brant’s mental state. It will also cover the “detective work” that Dr. McConville and other parties had to undertake to determine if the murders were actually committed by Mr. Brant or if his confession was the product of a delusion.

New Orleans in autumn will be the perfect backdrop for these four interesting and accomplished speakers and for all of the exciting presentations planned for the 53rd annual AAPL meeting. We look forward to seeing you in person after two years of virtual meetings. ☩

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- (1) Stevenson B. Just Mercy A Story of Justice and Redemption. Spiegel & Grau Trade Paperback Edition: 2014.
- (2) <https://eji.org/about/?gclid=CjwK-CAiAx8KQBhAGEiwAD3EiP83BRck>

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Kids, Custody and COVID

Stephen P. Herman, MD



It was bound to happen. The newest issue in the world of child custody is what to do about COVID vaccinations, the ensnared children and their litigant parents/guardians. What if there is disagreement about whether a child should be vaccinated? What if one parent refuses vaccination and the other receives it?

In October 2021, a Manhattan trial judge, Matthew F. Cooper, (since retired) issued a controversial decision. The case was *CB v. DB* (1). He wrote:

Throughout most of medical history, the advent of a vaccine was almost universally embraced as a means of protecting ourselves and our children from deadly or debilitating disease. In my lifetime, I need only think of how polio was eradicated in this country as a result of the vaccine first developed by Jonas Salk, with other diseases, such as measles, rubella, and death area, having been similarly eliminated.

He continued:

...unfortunately, and to my mind, incomprehensibly, a sizable minority, seizing upon misinformation, conspiracy theories, and muddled notions of “individual liberty,” have refused all entreaties to be vaccinated...in this ongoing divorce case involving a three-year-old child, the issue of COVID-19 vaccination is now before me. The issue is not one of whether the child should be vaccinated; she is still too young to receive any of the vaccines. Nor is it one of whether I can require an adult to be vaccinated; to do so would stretch the authority of a matrimonial court to unprecedented lengths. Instead, the issue is whether the plaintiff mother,

who has *de facto* custody of the child and is fully responsible for her care and upbringing, can condition the defendant father’s access with the child, which is limited and supervised, on defendant and his supervisor being vaccinated, or at the very least, submitting to a testing regimen prior to each of the access periods.

The father had maintained that because he’d already had COVID-19, he possessed enough antibodies to protect anyone around him from getting the illness.

On February 2nd, 2021, the plaintiff mother, along with the child’s guardian ad litem, made an emergency application “...for defendant and any supervisor utilized for defendant’s access to be vaccinated...on that date I issued a temporary restraining order suspending [father’s] in-person access on an interim basis until he was vaccinated.” At a subsequent hearing, the mother and guardian ad litem stipulated that in lieu of proof of vaccination, they would accept an agreement to a regular protocol of COVID-19 testing as a condition for the resumption of in-person parenting time.

In the judge’s decision in October 2021, he wrote that the father, “...for reasons that seemed more connected to his animosity [to the mother] than anything else, refused this reasonable proposal...and had argued that because he was a Catholic, the Church precluded him from receiving the vaccine...this justification rings hollow given that Pope Francis...is vaccinated and has encouraged Catholics everywhere to be vaccinated ‘for the common good.’” Judge Cooper amended the temporary restraining order, “to provide that defendant’s in-person access with child would remain suspended until he and any approved supervisor either receive the first dose of a COVID-19 vaccine or submitted to a COVID testing regimen that included a PCR test once per

week and a COVID-19 antigen test (a.k.a. “rapid test”) within 24 hours of any in-person visit. As with the original TRO, defendant was to continue to have liberal virtual and telephone access...”

The decision is murky because the guardian ad litem appears to have represented the perceived best interests of the child rather than having acted as the child’s attorney. Also, the judge did not define “liberal virtual and telephone access.”

As of October 2021, 42 states require parental authorization. Five states do not require the vaccine for all minors. In Arizona, parental consent is required; however, if the child or doctor requests it, a court order can be obtained allowing vaccination.

San Francisco allows children 12 and over to self-consent. Philadelphia allows minors age 11 and older the same right. By the time you read this column vaccines will be available for children age 5 and up. North Carolina has a new state law addressing the issue (2).

Matrimonial courts are bench trial courts, and judicial decisions are rarely overturned on appeal unless the judge commits an egregious error. The United States Supreme Court rarely grants *certiorari* to family law cases. It might, however, if there is a question sent by one or more appellate divisions touching upon due process or some other Constitutional issue.

An example is *Troxel v. Granville* (3). I followed this case from the beginning. In brief, a Washington state statute permitted any person to petition for child visitation rights at any time. It also authorized the court to order visitation rights for any person when visitation might serve the best interest of the child. These are not typos: any person...at any time.

In this case, the child’s father had died, and the father’s parents, the Troxels, petitioned for the right to see his daughters. Granville, the mother, did not oppose all visitation but objected to the amount of time sought. The trial court ordered more time than she desired, so she appealed.

The State Court of Appeals reversed

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and dismissed the Troxels' petition. That court reasoned that the Troxels' petition unconstitutionally infringed on parents' fundamental right to rear their children. The Federal Constitution permits a state to interfere with this right only to prevent harm or potential harm to the child. It also found that Washington State's law did not require a threshold showing of harm and swept too broadly by allowing any person to petition at any time, with the only requirement being that the visitation serve the best interest of the child.

The Washington Supreme Court reversed, and the case ended up before the US Supreme Court. The case was argued on January 12, 2000.

Thanks to my Congressman, who was a personal friend, I was able to bypass the usual line to enter the Supreme Court and was able to sit close to the Justices. At precisely 10:00 AM, the Court clerk came out and yelled, "Oyez, oyez . . ." I saw the *New York Times*' court reporter, Linda Greenhouse, sitting to the side. There were nine empty seats. The Justices emerged from behind nine curtains aligned with those seats and sat down. The Chief Justice at the time, William Rehnquist, sat in the middle. The other justices sat on either side, the most recent Justices sitting the furthest from the Chief.

If you'd like to hear the audio of the arguments, and the announcement of the decision on Jun 5, 2000, click here:

<https://www.oyez.org/cases/1999/99-138>

Justice Sandra Day O'Connor wrote the Court's decision with these Justices concurring: Rehnquist, Ruth Bader Ginsburg and Stephen Breyer. Justice O'Connor wrote: "The Due Process Clause prevents the government from intruding on fundamental rights and liberty interests, one of which is the liberty interest that parents have in controlling the care and custody of their children. The state may not give rights to any third party

to challenge any decision by a parent regarding visitation with that parent's child in state courts. Giving a state court judge the discretion to determine the best interests of a child in these situations violates due process, especially when there is no allegation that the parent is unfit. It is reasonable to presume that parents will act in the best interests of their children so the state should not interfere and take that role away from them."

Justice David H. Souter authored a concurrence, writing: "The Washington Supreme Court acted correctly in striking down its own statute, a decision that complies with Supreme Court precedents."

Justice Clarence Thomas also concurred: "This decision complies with long-standing jurisprudence in the area of substantive due process."

Justice John Paul Stevens dissented: "Judicial review by the Supreme Court is inappropriate when a state supreme court required its state legislature to revise a law so that it would comply with the U.S. Constitution. Since the Court accepted this case, however, it should have attempted to resolve it on federal rather than state grounds."

Justice Antonin Scalia also dissented: "The legislature rather than the court should resolve this issue because federal law and the federal Constitution should not give rise to a federal body of family law created by the judicial system. The view that the right to raise one's children was created by the Declaration of Independence and reserved to the people in the Ninth Amendment is merely a personal opinion, albeit a well-supported one."

Finally, Justice Anthony Kennedy weighed in with his dissent: "Third parties who seek visitation with children should not be required to show that the lack of visitation would affirmatively harm the child. Once further proceedings had unfolded in state court under that adjusted standard, the Court could return to any federal questions that might arise later, such as whether the statute failed to protect the parent's rights sufficiently."

Thus, the decision of the Court was

six Justices affirming the decision of the Washington State Supreme Court and three dissenting.

Where does that leave those of us who are court-appointed custody evaluators? Ask parents about whether they and their vaccine-eligible children have been immunized. Note any differing views between the parents. If called to testify, say the report speaks for itself. If pressed by an attorney or the judge, answer something like this: "My choice has been to be vaccinated and boosted." Stay tuned. ☺

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AAPL Program

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**AAPL Awards Committee Seeks
2022 Nominations**

The AAPL Awards Committee would be interested in receiving nominations by June 1 for the following awards:
Red AAPL, Golden AAPL, Seymour Pollack Award, Amicus Award, and Howard V. Zonana, MD Best Teacher in Forensic Fellowship Award.
For descriptions of the awards, please go to aapl.org/awards. Send your nominations to Charles Scott, MD, Chair of the Awards committee at clscott@ucdavis.edu.

Susan Hatters Friedman, MD: The Apple (or AAPL) of Cleveland's Eye

Sara G. West, MD



In January, 2004, I was interviewing for residency in Cleveland, and I had just had the opportunity to speak to Dr. Resnick. To

round out the day, I was directed to the office of Dr. Susan Hatters Friedman, a recent graduate of the University Hospitals psychiatry residency who was poised to start her forensic fellowship with Dr. Resnick just a few months later. Little did I know at the time, but I was about to join the ranks of countless trainees fortunate enough to call Dr. Hatters Friedman not only their mentor but also their friend.

Susan took the time to speak to me about this amazing organization called AAPL. I later came to learn that she had won the Rappeport Fellowship just the year before, and as a means of tying together her interest in women's health and forensics, also secured a position on the Gender Issues Committee in 2003. She went on to chair that committee from 2006 to 2009 and returned to do so again in 2018. She was quite active in Midwest AAPL, first as a councilor and later as its president from 2012 to 2013. Concurrent to this, she worked her way up through the ranks at AAPL, ultimately becoming the president of our national organization in 2021. While this tremendous accomplishment is certainly reflective of her dedication to the organization, AAPL has also recognized Susan's commitment to other passions, including education, honoring her with the Red AAPL award in 2017. AAPL has had the opportunity to benefit from Susan's vast experience and incredible talent in research and publishing. She served as the AAPL Newsletter Editor from 2016 to 2018, and was chosen as Deputy Editor of JAAPL in 2018. Here are a few other "fun facts" regarding

Susan and AAPL: the term "AAPL" appears 216 times in Susan's CV, she has presented 70 times at AAPL/Midwest AAPL meeting, and she has published 52 articles in the AAPL Newsletter and 61 in JAAPL.

Susan's accomplishments are virtually endless, and rather than recount those, I want to take this opportunity to give you a glimpse of the woman behind the CV. Not surprisingly, Susan tells me that she had a number of different interests in medical school. Psychiatry was not at the forefront of her mind. Serendipitously, she enrolled in a law school class taught by Dr. Resnick, which opened the door to the world of forensic psychiatry. Shortly thereafter, when called upon to make decisions regarding her future residency and career, she remained undecided and asked her husband, Josh, for advice. He noted that he was confident that she would make the right choice for herself. After she chose to pursue psychiatry, Josh later explained that he knew this was proper path for Susan well before she did.

Susan told me about her first AAPL meeting. In October 2001, she traveled to Boston, leaving behind her two young children and Josh, who was finishing his MD/PhD studies at the time. Upon her arrival, she was immediately enamored, commenting, "Every room had something more exciting than the last." As she perused the selections available at the book fair, she was thrilled to bump into Tom Gutheil, who, true to form, cracked a joke about the importance of buying his book. Susan said that she knew that she had found her "professional home." After joining the Gender Issues Committee, she felt so welcome, excited to be among the "most respected women in our field." She added that becoming chair of that committee was a huge "vote of confidence from senior members" of AAPL.

Susan's unwavering dedication

to her peers and AAPL as a whole did not prevent her from pursuing her dreams of practicing forensic psychiatry internationally. In 2013, Susan and her family moved to New Zealand, where she provided clinical care at a forensic hospital in Auckland and served as an Associate Professor at the University of Auckland Faculty of Medical and Health Sciences while maintaining a strong and meaningful presence in our organization half a world away.

Of all her impressive accomplishments, Susan stated that the one about which she was "the most nervous" involved interviewing for the position of deputy editor of JAAPL, as it would give her "the opportunity to shape the literature of our field," which of course she has clearly done. And one of the things about which she is most proud is her ability to maintain close, ongoing relationships with the brilliant colleagues, Rebecca Brendel and Elizabeth Ford, who were her companion Rappeport fellows 18 years ago.

Like many AAPL members, I have reaped the benefits of Susan's brilliance and dedication to the field of forensic psychiatry. She has, throughout the entirety of her impressive career thus far, continued to shepherd students, trainees, and early career psychiatrists through the harrowing process of research, writing, publishing, and presenting. Fortunately for all of us, she is just getting started! ☺

President's Column

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and our colleagues. We educate judges and attorneys. We educate jurors from the lay public.

Indeed, our job educating judges and juries would be easier to do if we had actively educated the public about our field, so that we are not so much fighting an uphill battle against misconceptions perpetrated by fiction.

Educating the public includes educating writers (whether novel writers, screenwriters, or reporters) so that correct information and characterizations are what the public sees.

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Working with Justice-Involved Youth: Lessons from the Era of COVID-19

Alyssa Beda, MD; Jorien Campbell, MD; Kathleen Kruse, MD;

Alexandra Junewicz, MD; Anne McBride, MD

Child and Adolescent Psychiatry Committee

On October 19th, 2021, the American Academy of Child and Adolescent Psychiatry (AACAP), the American Academy of Pediatrics (AAP), and the Children's Hospital Association (CHA) jointly declared a National State of Emergency in Children's Mental Health. These organizations called attention to the children's mental health crisis exacerbated by the COVID-19 pandemic and the ongoing struggle for racial justice, with children of color disproportionately impacted (1). The children's mental health emergency is of particular concern for youth at risk for or involved in the juvenile justice system, given the high mental health needs in justice-involved youth. In addition to our children's mental health system, the pandemic had a severe impact on overlapping systems of care for at-risk children.

Pre-pandemic, justice-involved youth had higher rates of psychiatric diagnoses compared to the general population. In the general population, the pandemic led to new-onset psychiatric problems and an exacerbation of pre-existing mental health conditions in youth. Simultaneously, it strained and transformed the mental health care system serving them. Stay-at-home orders and pandemic restrictions necessitated a quick shift to tele-services for outpatient mental health visits and decreased patient censuses for inpatient units. The demand for youth mental health services remained high, as compared to the demand for pediatric medical services. The proportion of emergency department visits for mental health complaints increased by 31% among adolescents. These youth were more likely to present with suicidality or require inpatient admission (2-4). Pandemic-related stress and deteriorating mental health heightened the needs of the most vulnerable youth. These included children with

histories of trauma, autism spectrum disorder or intellectual/developmental disabilities, children residing in residential settings or foster care, and those in low-income households and members of minority groups (5, 6). School closures resulted in a loss of mental health services (7).

Students experienced significant learning loss, absenteeism, and a negative impact on social-emotional and mental health. Schools generally provide tremendous resources to students such as safety and support. Schools can also serve as a gateway to identify mental health needs. However, historically, the school system has also played a significant role in increasing juvenile justice entry through punitive disciplinary policies and arrests on campus. This "school-to-prison pipeline" disproportionately affects minoritized youth (9). Given that poor academic performance, decreased engagement in school, and undertreated mental health needs can increase exclusionary discipline and juvenile justice involvement, interventions within the school system are critical for juvenile justice prevention.

Simultaneously, the pandemic has dramatically disrupted the child welfare system. The nation's system of detecting abuse and neglect was immobilized, as most mandated reporters were no longer seeing children and adolescents in-person due to stay-at-home orders (10). Vital parts of the system such as home investigations and home-based parenting programs were in many areas halted. Factors created or exacerbated by the pandemic such as poverty, housing instability, domestic or intimate-partner violence, and parental mental health disorders increased the risk of child maltreatment and commercial sexual exploitation of children, highly relevant risk factors that contribute to juvenile justice involvement (11, 12).

Within the juvenile justice system itself, COVID-19 critically impacted youth. Public health and court responses to the pandemic led to delays in hearings and ultimately continued confinement (13). As a result, courts made efforts to reduce the confined population, including expedited processing and community diversion (14). However, decarceration did not result in absolute reductions in system involvement. Instead, the system saw a shift in workload from confined settings to community settings, placing increased demands on already strained community-based programming.

The juvenile justice system experienced significant disruptions in educational and rehabilitative programming, as well as limited contact with positive family and community supports. To prevent COVID-19 spread, confined youth were placed in medical isolation, which included isolation in a cell for up to 23 hours per day (15). As a result, confined youth were placed in functional solitary confinement, resulting in negative mental health consequences, including depression, suicidality, and retraumatization (16).

The pandemic has impacted and highlighted shortcomings in several systems serving youth. Moreover, it has rendered youth who were already vulnerable, and already at risk for juvenile justice involvement, even more vulnerable and at even greater risk for juvenile justice involvement. Opportunities for systemic change are abundant and must prioritize racial and ethnic equity, given the pervasive racial and ethnic disparities within the system (9). Alarming, pre-pandemic racial disparities were found to grow with almost every step of the juvenile justice system. (17). There is an urgency to identify the children at risk for juvenile justice involvement and provide them with equitable access to appropriate services. Forensic psychiatrists are uniquely positioned to use their knowledge, experience, and expertise to advocate for continued progress and improvement in the child welfare, education, mental health, and juvenile justice systems. Within the child welfare system, we

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Justice-Involved Youth

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must continue to identify the most vulnerable populations and ensure access to mandated reporters and family-support resources. Within the school system, we must re-engage and catch up the most vulnerable youth to prevent poor outcomes downstream, and close the school-to-prison pipeline. Within the mental health system, we must ensure equitable access to treatment, strive to foster resilience in youth, and connect families with supports and resources. And once a juvenile makes contact with the criminal justice system, we must work to minimize punitive approaches to behavioral problems and focus on rehabilitation. The timing is right for reforms that expand implementation of evidence-based approaches and that prioritize fair, equitable, and effective treatment for all youth. ☎

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What is the AAPL Government Affairs Committee?

Neil S. Kaye, MD, DLFAPA, Chair

Mission Statement: As an educational organization, AAPL Committees are committed to education for members on relevant forensic issues. In the area of government affairs, this could include helping members to stay current in their knowledge of federal and state laws that affect forensic psychiatric topics such as, but not limited to: involuntary hospitalization/commitment; right to treatment; right to refuse treatment; disability law; mandatory reporting; maintenance of certification and licensing; non-MD prescribing; criminalization of physician behavior and opioid prescribing; "Tarasoff" laws; medical malpractice limits and standard of care issues in telemedicine; physician assisted suicide; and access to care.

It is important to note that as a committee, AAPL's Government Affairs Committee (GAC) is focused on member education and not on direct public or governmental advocacy, as that would not be considered educational in nature, and exceeds the scope of an AAPL committee (and could potentially jeopardize the 501(3)(c) tax status of the organization). Formal advocacy work for forensic psychiatry is generally done through the APA. AAPL has significant input to the APA through the activities of AAPL members and forensic psychiatrists who have had and currently hold high-level positions and chair or have chaired relevant APA Committees, such as the Committee on Judicial Action (CJA) and Council on Psychiatry and Law (CPL).

Member education can occur via Committee engagement, presentations, AAPL Newsletter articles, JAAPL articles, or other venues as established

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Who Pulled the Trigger on Lee Harvey Oswald? Epilepsy or Jack Ruby himself?

Bao Nguyen; Brandon Simons; and Ryan Hall, MD

For this edition of In the Media we will break from the tradition of focusing on a recent news story and instead examine a historic 1964 *New York Times* story entitled “Ruby Trial Focuses Attention On Seizures and Their Effects.” (1) One of the most famous examples in American judicial history of an ictal automatism defense was that of Jack Ruby, the man who shot Lee Harvey Oswald, the alleged assassin of John F. Kennedy. Mr. Ruby pleaded not guilty by reason of insanity, claiming his actions were the result of suffering from a complex partial epileptic seizure or “psychomotor epilepsy” as described by the *New York Times*. At the time, there was a lot of debate about whether it was possible for someone to engage in complex behavior such as shooting an identified target without self-control. For example, some testimony indicated that Ruby had “an epileptic personality,” which is a currently out-of-favor psychoanalytical theory that includes explosive impulsivity, affective viscosity (the tendency to prolong interactions with others), and egocentricity. (2)

Eventually, the testimony boiled down to three key factors: Did Ruby’s medical records indicate electrical brain activity consistent with epilepsy? Can someone in the midst of an epileptic state perform a complex criminal act? And is an individual with psychomotor epilepsy typically psychotic? (1) The defense expert, Dr. H. Houston Merritt, testified yes to all three questions. Dr. Merritt, a well-known epileptologist, worked in collaboration with Dr. Tracy J. Putman to discover Dilantin, one of the first drugs to treat epileptic attacks without producing drowsiness. (1)

Violent acts are rarely committed by individuals in an epileptic or post-epileptic state. (3, 4) Epileptologists divide the types of violence that can occur into ictal, postictal (including subacute postictal aggression), and

intraictal (i.e., psychosis occurring in a period after or between seizures). (3, 5) The subacute postictal designation is more controversial and still debated in the literature. (6)

Behaviors that may occur during the ictal period depend on the type of seizure and brain regions where the seizure started or spread. As medical professionals know, not all seizures are grand mal, but may present in a variety of forms. However, laymen who make up a jury are not as familiar with other types of seizures, such as complex partial seizures (i.e., focal onset, impaired awareness seizures which often originate from or affect a temporal lobe). In these types of seizures, more complex and directed movements (e.g., shouting, mumbling, walking/running) can occur, often with the individual having no memory of the event. (7)

In 2014, the Epileptic Foundation recommended training for police officers to become competent at recognizing potential ictal and postictal behaviors. This training was proposed out of concern that a knowledge gap was leading to arrests of individuals suffering from various forms of epilepsy. (8) The Epileptic Foundation noted:

While in an altered state of awareness, an individual with complex-partial seizures may commit an undirected act which may be perceived as “criminal” – for instance, picking up objects, grabbing someone close by, and opening or rattling doors – that may lead to arrest and prosecution for such crimes as shoplifting, assault or disorderly conduct. These behaviors are usually stereotypical, that is, the person does something similar every time he has a seizure, and the individual usually has impaired consciousness so he cannot control the movements or behaviors. (8)

Postictal states can also result in violence. Possible causes include delirium, marked by confused thinking or reduced awareness of the environment, and “resistive violence,” often elicited by restraint or invasion of personal space. (3, 5) The definition and duration of a postictal state is difficult to define, which can lead to uncertainty over when it has fully resolved. (9) Some postictal symptoms can resolve within 30 minutes, while other symptoms and sequelae can potentially persist for hours to days. (6, 9)

Subacute postictal aggression occurs during resolution of the postictal state. It is characterized by aggressiveness and more purposeful actions. However, individuals in a subacute postictal state are still limited in terms of understanding their actions. The general incidence of more organized, directed, and aggressive behaviors post-seizure is thought to be rare, with various meta-analyses and case series estimating the rate at about 1 to 5 per 1,000 episodes. (3, 9) Many of the case series related to subacute postictal aggression found that individuals often had epilepsy for an extended period of time (decades), displayed seizures that affected the temporal or frontal lobes, often had a recent string of seizures, and were more commonly males with a history of medication-refractory seizures. (3, 5, 6, 9) The periods of aggression usually lasted about 5 to 30 minutes in length. (6)

Several mechanisms have been proposed to explain why there may be more organized or aggressive behavior postictally. Some theories suggest that motor behavior may regain function prior to frontal or temporal lobe inhibitory functions. (5, 6) Similarly, some experts hypothesize that the limbic system (i.e., anxiety or fear) may also regain function prior to frontal or temporal lobe inhibitory function, especially in those with frontotemporal epilepsy. (5, 6, 9) According to this theory, the epileptic discharge results in a hypoxic state in these “brake” regions of the brain, allowing for the aggression to arise from an unopposed limbic system. Longer epilepsy duration is also thought to result in

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Who Pulled the Trigger

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more impaired control networks, which would explain why postictal aggressive behavior is more common in individuals with refractory epilepsy over decades. (5, 9) These proposed mechanisms may also explain why subacute postictal aggression is often reported to occur within close proximity of the seizure, but after some functional improvement has started to occur. (6)

There is also the condition of ictal or postictal psychosis, which can occur in 4-6% of individuals with epilepsy. (9, 10) This often occurs in individuals who have had clusters of recent seizures. (9) They may have a lucid interval after their last seizure, but then develop psychotic symptomatology, which can last days to weeks. This state presents with classic psychotic symptoms such as paranoia and delusions, which can lead to criminal behavior similar to that seen in more traditional psychotic states such as those seen in individuals with schizophrenia. (10)

For evaluators trying to address if an ictal or postictal state resulted in violence, some experts suggest that the following criteria should be met: pre-existing documentation of epilepsy, observation of violent behavior during a previous seizure episode or similar stereotyped movements (e.g., kicking), and ideally some correlation with EEG monitoring, especially with video. (3, 4) In general, it is also necessary to rule out other potential motivations for the action. These are general suggestions, which may work better for researchers than forensic evaluators. Rarely does a criminal complaint occur when an individual is undergoing video EEG. In the forensic world, it is often difficult to document objectively that an individual had a seizure around the time of alleged criminal events. Therefore, often a hypothesis of causation is based on medical records, statements from people who were around the individual at the time, and the individual's actions such as vocalizations and behavior prior, during, and after the

alleged event.

While uncommon behaviors have been well documented in epilepsy, it is difficult to establish the extent of voluntariness in acts of aggression. As such, epileptic defenses are difficult to prove and often require extensive education of the trier of fact. As seen from the unsuccessful defense mounted by Jack Ruby, no matter how qualified the expert, the more organized, complex and time-intensive the act, the lower the chance for a successful defense. ☹

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President's Column

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We should have an open door, both for journalists and for fiction writers. Holding lectures and discussions and articles (7) for crime fiction writers, it has been empowering to see the thoughtful questions they pose and the care they demonstrate about mental illnesses and forensic ethics.

As forensic psychiatrists, we have much more to say about our field's ethics and about the population we serve than only focusing our attention on the Goldwater Rule. The need for education about mental health and violence in the community is great.

We should not underestimate the effects of fiction. ☹

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Medical Director

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and a council to address important long-range policy issues. Alan's many achievements on behalf of the organization culminated in his APA presidency.

I met Alan in a noisy Harvard Law School cafeteria. Paul Appelbaum had arranged our meeting, as Alan would pave the way for me to take classes at the law school as a fourth-year resident. He was kind to me, expressed enthusiasm for my research interests, and encouraged me to continue working with Paul. The courses I took that year were memorable and laid a solid foundation for my understanding of legal thinking. Alan's course on law and psychiatry would serve as a template for my law school teaching. Throughout my career, Alan was supportive, offered encouragement, and direction. I miss him.

Alan had many accomplishments. But I will most remember him for the special place he created in the APA for law and psychiatry. Alan was responsible for the creation of the APA components, but he also chaired them and, in doing so, established precedents for behavior and ethics, and practical guiding principles. As a great leader, he attracted a committed cadre of other talented and great people who continued in his footsteps. The discussions were seminar-like: substantive, extensive, and challenging. Many participants, including myself, found these meetings to be among the most stimulating and rewarding activities of their careers. It was serious and deeply rewarding work, but it was also fun and led to lifelong friendships. I am grateful to him; my professional career would have been impoverished without these opportunities. ☪

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Government Affairs

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by AAPL's Council.

Mentorship opportunities for less seasoned members could be facilitated to allow an individual member to see firsthand how the gears of government turn.

The Committee stands ready to discuss governmental issues as directed by AAPL Council and to act as a source of recommendations and reference material for Council should it so desire.

For AAPL members interested in more direct advocacy work and potential lobbying efforts, involvement in the APA including the APA's Council on Advocacy and Government Relations (CAGR) and their Department of Governmental Relations (DGR), and the Council on Psychiatry and Law (CPL) should be considered.

Be aware that the APA and AMA often have "Model Legislation" on many of the critical issues and these are excellent resources to share with a District Branch and/or legislator (e.g., <https://www.psychiatry.org/psychiatrists/advocacy/state-affairs>). The APA also has a Federal Advocacy Conference every June (<https://www.psychiatry.org/psychiatrists/advocacy>) which is worth attending for members who want to have "boots-on-the-ground" experience.

An excellent book chapter entitled Legislative Consultation and the Forensic Specialist by Michael Norko, MD, is worth reading, as is the APA Resource Document, Advocacy Teaching in Psychiatry Residency Training Programs. ☪



AAPL Newsletter
American Academy of Psychiatry and the Law
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