

# Human Rights and Involvement of Mental Health Practitioners in Death Penalty Cases

**Celia B. Fisher, Ph.D.**

Marie Ward Doty Endowed Chair

Professor of Psychology

Director Fordham Center for Ethics Education

In Good Conscience: Human Rights in the age of Terrorism, Violence and Limited Resources,  
Fordham University

April 5, 2016

# Today's Topics

- Role Responsibilities of Forensic Psychiatry/Psychiatry [FP] in Death Penalty Case
- Human Rights and Psychiatrists/Psychologists [Psych] Involvement in Post 9/11 Detainee Interrogations
- Human rights and Psychiatrists/Psychologists involvement in Death Penalty Cases

# Capital Punishment

Definition: The legally sanctioned practice of killing people as punishment for certain crimes

- In the US death penalty cases are used almost exclusively for the crime of murder

Arguments for the death penalty include

- Deterrence
- Public safety
- Retributive justice

Arguments against

- It is not a deterrence
- There are alternative mechanisms for public safety
- Intrinsic value of human life

# Legal Challenges: 8<sup>th</sup> Amendment

8<sup>th</sup> Amendment: Prohibits the federal government from imposing cruel and unusual punishments shall not be inflicted

## Supreme Court rulings

- 8<sup>th</sup> Amend applies to all states
- The death penalty is not a *per se* 8<sup>th</sup> Amend violation
- But does apply to how the death penalty is adjudicated and carried out

# Capital Punishment: Key Supreme Court Decisions

- *Furman v. Georgia (1972)*
  - *Struck down all then existing death penalty laws as violative of 8<sup>th</sup> Amendment ban on cruel and unusual punishment based on standardless imposition without thought of circumstances of crime*
- *Ford v. Wainright (1986)*
  - *Insane inmates cannot be executed*
- *Gregg v. Georgia (1976)*
  - *During sentencing, capital cases must consider psychological factors that would affect jury decisions i.e. understanding reason for execution, probability of future violence*
- *Atkins v. Virginia (2002)*
  - *The use of the death penalty for defendants with intellectual developmental disorders (formerly “mental retardation”) is unconstitutional*
- *Panetti v. Quarterman (2007)*
  - *Death penalty is prohibited if assessments indicate defendant does not understand reason for imminent Execution*
- *Hall v. Florida(2014)*
  - *Strict IQ cut-off point for MR/IDD in capita cases in unconstitutional.*

# Forensic Psychiatry/Psychology: Definition

- Deals with issues arising in the interface between psychiatry and the law and with the flow of mentally disordered offenders along a continuum of social systems (Arboleda-Florez, 2006)
- Application of the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters. (Forensic Psychology Guidelines, 2013).
- The role of the forensic practitioner is to provide the trier of facts with psychiatric/psychological information relevant to the legal question at hand.

# Forensic Roles in Capital Cases

- Competence to stand trial
- Competence to enter a plea
- Testimonial capacity
- Voluntariness of confessions
- Insanity defense
- Diminished capacity
- Sentencing considerations

# Mitigating and Aggravating Factors

- **Mitigating Factors**
  - Under influence of extreme mental or emotional disturbance
  - Lack of capacity to appreciate criminality of conduct or to conform to such conduct
  - Lack of capacity to assist in his/her defense
- **Aggravating factors**
  - Future dangerousness

*A verdict of death if aggravating and no mitigating factors or if aggravating factors outweigh mitigating factors*



# Clinical vs Forensic Practice

## Who is the Client:

- Patient vs. Attorney or Court

## Goal of Services:

- To promote the mental health and best interests of the client through assessment, diagnosis, or treatment v.
- To inform the trier of facts on data relevant to the legal question at hand to promote the best interests of the court to ensure a fair legal process
- **Blurring of Roles:**
  - Treatment provided in correctional settings

# The Distinctive Role of Attorneys & Experts: Establishing Boundaries

The rules of law ensure justice is served by protecting the rights of each party in to control what information will be placed into evidence and debate its legal merits.

- Primary responsibility of attorneys is to advocate on behalf of their client and present the best case possible before the court.

In the legal context, the primary responsibility of expert witnesses is to provide the triers of fact with information needed to make determinations about the legal question at hand.

- The primary responsibility of psychologists providing opinions to the court is therefore to advocate for the facts and not for the legal position advanced by either of the disputing parties nor to have expert opinion reflect personal biases regarding the death penalty

# Conceptual Framework for Forensic Roles

Rosner (2016)

- What is the specific legal issue that must be resolved as defined by law in the specific jurisdiction?
- What are the legal criteria (distinct from clinical criteria) that must inform data collection, interpretation and reporting?
- What type of information and data collection techniques as part of or distinct from clinical practice that are specifically relevant to the legal question?
- How can the relevant data be applied to the legal criteria to provide rationally convincing opinion?

# The Insanity Defense: Mitigating Factors

# Insanity Defense: Legal Definition

- Defendants are not responsible for their actions due to an episodic or persistent psychiatric disease at the time of the criminal act that results in....
- Inability to distinguish fact from fantasy or control impulsive behaviors at time of criminal act
- At trial: A capital case defendant may be transferred to a psychiatric institution for treatment until such time as he/she can stand trial or can be found not guilty by reason of insanity or be receive a less severe punishment

# Insanity Defense: Assessment Challenges

- ≠ DSM diagnosis
- Gathering history to reconstruct mental state of defendant at time of alleged offense ≠ DSM diagnosis
- Poor communication skills
- Malingering
- Limited resources of collateral information
- Lack of records
- Un-cooperation (on advice of attorneys)

# Insanity Defense: Testimonial Challenges

- Testifying regarding the likely truthfulness of the defendant's comments
- Framing and communicating clinical data in a manner that addresses the legal definition—including testifying as to the “truthfulness” of defendant's responses

Inability to collect relevant information can lead to under or over diagnosis and undermine defendant's rights or court responsibilities

# Assessment for Competency to be Executed following Guilty Verdict

- Ford v. Wainwright 1986 “insane inmates cannot be executed”
- To what extent do delusions or other psychotic symptoms impair competency to be executed?
- A DSM diagnosis is not necessarily acceptable evidence
- The Supreme Court has recognized the need to include symptomology but state criteria vary
- Some states have argued that understanding fact of and reason for the execution is sufficient
- “I am going to be executed because I murdered someone”



# Treating Death Row Inmates: Diagnostic Challenges

- Are symptoms reflective of premorbid illness or current stressors of incarceration? (Yanofski, 2011)
- Supermax confinement involves isolation and sensory deprivation
- “Death Row syndrome” anxiety, disassociation and psychosis
- Awareness of impending execution—US courts ruled that long periods on death row could amount to cruel and unusual punishment

# Treating Death Row Inmates: Balancing treatment and security needs

The inmate indicates the intention to seriously harm another inmate or guard or create serious prison disorder?

*Will recording or reporting such intent increase the judgment of aggravating factors during sentencing?*

A death row inmate admits guilt while awaiting appeal? In some states homicide confessions are considered unprivileged

## Symptom Onset

- What if an Inmate develops a serious psychiatric disorder during confinement?

## Symptom Alleviation

- Does restoring the inmate to competence assist the inmate or the state?
- What if a comment in a progress note indicates increased competence to understand purpose and nature of execution?

# Do Prisoners Have a Right to Refuse Anti-Psychotic Medication?

*Underlying ethical balance: Preserving patient dignity while maintaining allegiance to treatment needs*

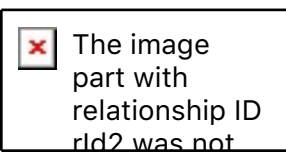
- Danger of developing irreversible neurological side effects
- Balancing Prison Safety against Prisoner Rights
- Medicated defendants may be denied a fair trial because jurors are deprived of a fair presentation of their “natural demeanor” at both initial trial stage and execution decision stage
- Withhold treatment for his/her own political reasons

# Forced medication of defendants pleading insanity

States vary in the extent to which they apply the following criteria?

- Treatment medically appropriate
- Necessary to restore defendant to trial competence
- Defendant can be fairly tried while under medication
- Side effects do not undermine trial fairness
- Trying defendant will serve an essential government interest

US. V Gomes 2002 and Sell v. US 2003



# Participation of Physicians in Court-initiated Medical Treatments: AMA 2016 9.7.2

- Only if therapeutically efficacious and therefore undoubtedly not a form of punishment or solely a mechanism of social control
- Based on sound medical diagnosis and not court-defined behaviors
- Decision by physician(s) not responsible to the state
- Decline if treatment is not scientifically validated or consistent with nationally accepted guidelines
- Be able to conclude, in good conscience that to the extent possible the patient voluntarily gives informed consent that is uncoerced

# Defendants and Convicted Criminals with Intellectual Developmental Disorders: Mitigating Factors

# Atkins v. Virginia (2002): Death penalty for defendants with IDD is unconstitutional

Cognitive limitations, limits on impulse control, suggestibility, and desire to please →

- Difficulty understanding legal boundaries of actions
- Vulnerability to demands by others to engage in criminal acts,
- Difficulty understand their Miranda rights,
- More willing to confess (sometimes falsely),
- Unable to work effectively with attorneys,

# History of Legal Definitions of MR/IDD

- Following Atkins, most states relied on fixed arbitrary IQ test cut-off scores: .  $\geq 70$  IQ = IDD;  $\leq 71$  not IDD
- Hall v. Florida (1986) Fixed IQ cut-off unconstitutional
- States expanded cut-off points to 85 – 70 and considered SD to avoid false positives or over-estimating minority -but adaptive score was ignored
- Others like Texas developed their own criteria
  - Did family/friends think person mentally retarded at the time and
  - if so act in accordance with that determination;
  - Can the person defendant lie effectively
  - Have defendants shown leadership or are they led around by others



# Moore v. Texas (2017)

- Atkins referred to any form of mental disability whether severe or mild
- diagnosis of IDD for capital cases must use “legitimate medical diagnostic criteria”
- DSM-V: IDD diagnoses reflected a move away from test score definition to more clinical disorder definition based on cognitive impairments and adaptive functioning

# IDD Diagnosis for Capital Cases: Continued Challenges

- IDD persons have mixed cognitive profiles that may not be assessed in a measure of global cognitive impairment
- Increased use of neurocognitive tests for frontal lobe “executive functions”
- Some suggest that “risk unawareness” is core phenotype
- Diagnostic tests may be inadequate approximations of cognitive functioning in real life situations and mastery of practical tasks
- Flynn effect: full scale mean scores on new tests lower so IQ score can be a lottery based on which test version was used

# Malingering: System Validity Assessment [SVM]

# SVM Assessment Challenges

Definition: intentional production of false (over-or under-exaggeration) symptoms to attain an identifiable external benefit

- Diagnostic errors can impede justice when undetected or obscure adequate treatment for psychopathology when over-determined.
- Should testees be informed that malingering will be assessed?
- Current standards: Notification that measures will be used to assess honesty and efforts to do well
- Employing SVM tests only for detainees with suspected malingering → inability for scores to distinguish between malingering responses and responses indicative of mental illnesses

# Prediction of Future Violence: Aggravating Factors

# Predicting Dangerousness: Criteria

Scott & Resnick (2017)

- Magnitude of potential harm
- Likelihood (e.g. history of acting on violent thoughts)
- Imminence of harm
- Frequency of violent behavior
- Situational factors (access to weapons, exposure to substances, access to weapons)
- Demo factors: younger age groups, male

# Prediction of Dangerousness: Challenges

- History of violence is best predictor (criminal, court, military records, disciplinary measures)
- Individuals at risk for psychosis more likely to be criminally charged (threat control delusions or common auditory hallucinations)
- Research indicates fundamentally low reliability
- Predictions generally lay determinations
- Statistical and actuarial information is best predictor and fundamentally non-medical in nature

# Legal and Ethical Challenges for Forensic Assessment in Capital Cases



# General Acceptance Standard

- Judges must exclude expert testimony from evidence when the data and methods used to substantiate the data are insufficiently linked to the legal question at hand (Frye v. US, 1923; Daubert v Merrell Dow Pharm Inc, 1993; General Electric v. Joiner, 1997; Kumho Tire v Carmichael, 1999)
- Can assessments used in clinical settings be included in forensic opinions if they have not been validated for application to issues before the court?
- DSM criteria may not meet evidentiary standards because derived from a process of consensus among a small group of professionals drawn from clinical experience or data not necessarily related to applicability in legal settings
- Is there a reliable and valid evidentiary case for causation opinions?

# Avoiding Bias in Collection and Interpretation of Forensic Data

## Common Errors in Forensic Assessment

- Seeking out information to confirm a litigant's argument or own theoretical view
- Relying largely on familiar diagnoses
- Over-or under attribution of behaviors to situational versus stable personal characteristics
- Failure to consider effort, deception and malingering
- Over reliance on assessment instruments which enhance objectivity and reliability but are not individualized, personal or contextual
- Preconceptions resistant to challenge by conflicting data

# Common Errors in Testimony

- Reliance on memory to fill in gaps in evidence recorded
- Failure to answer legal question
- Equating diagnosis with incompetency—often incompetence is legally required to be the result of mental disease or deficit which can push psych into trying to fit evaluation into a DSM5 category
- Using medical terms not understood by triers of fact
- Opinion with out support

# Corrective Strategies for Forensic Assessment

- Generate alternative hypotheses
- Use comprehensive batteries
- Carefully record all facts
- Examine which facts support or challenge initial impressions
- Guard against assumptions that attorney has provided all relevant facts
- Ask for pleadings and legal memorandum and competing perspectives of stakeholders in the legal case at hand
- Acknowledge the limitations of data or conclusions in reports and testimony
- Be familiar with judicial rules for correcting mis-statements during testimony
- Evaluate the extent to which a case touches on personal biases and take steps to ensure objectivity

# Post 9/11 Involvement of Psychiatrists and Psychologists in “Harsh Interrogations”

# Pre- 9/11 Prohibition Against Psychiatrist/Psychologist Involvement in Torture

- UN Convention Against Torture (1984, effective 1987) prohibits torture and other inhumane and degrading treatment or punishment including water boarding, exploitation of phobias & psychopathology
- Since 1985 both APAs endorsed prohibiting members from actively participating in these activities
- Psychologists and psychiatrists traditionally worked with military to help train active personal to resist torture

# Post-9/11 Challenge

- Bush administration determines some forms of “harsh interrogations” were not torture and thus “lawful”
- Psychologists working for the CIA drew upon training for torture resistance to design “harsh interrogation” techniques for detainees at Abu Ghraib.
- Institute of Medicine as a Profession charged doctors working in detention centers provided medical information for interrogation purposes and force-feeding of hunger strikes and were not able to provide detainees adequate medical care.
- Health professionals were characterized as “safety officers” to undermine ethical obligations as health professionals

# Position Statement on Psychiatric Participation in Interrogation of Detainees 2006 - 2014

## Psychiatrists

- Do not participate in, *or otherwise assist or facilitate*, the commission of torture or participate directly in interrogation.
- *However can provide training to military or law enforcement on effects of interrogation*
- Must report torture to persons to take corrective action
- Should provide appropriate medical care [*but*] *not disclose records to persons conducting interrogation*



# AMA 2016

## 9.7.4 Physician Participation in Interrogation

- May not monitor, conduct nor directly participate in interrogation
- May develop effective interrogation strategies for general training. Such strategies must not threaten or cause physical injury or mental suffering and must be humane and respectful of rights
- May perform assessments of detainees to determine need for and provide medical care.
- Must disclose who will have access to medical records
- Treatment must never be conditional on patient's participation in interrogation
- Must report coercive interrogations to appropriate authorities; if authorities are aware but do not intervene physicians are ethically obligated to report offenses to independent authorities that have power to investigate or adjudicate such allegations

# American Psychological Association Controversy

- UN Convention does not include sleep or sensory deprivation
- Did not have a definitive prohibition against indirect participation in detainee interrogations arguing that their consultative and information gathering role was ethical
- 2002 Ethics Code Standard 1.02 Conflicts between Ethics & Law....if conflict is unresolvable...psychologists may adhere to the requirements of the law, regulations or other governing authority

# When Laws are Immoral

- Even when psychologists are not *directly* designing, or administering harsh interrogations
- Any professional activity conducted in a setting in which prisoners are denied basic human rights runs the risk of facilitating or endorsing such violations and is unethical
- 2010 Amendment to Conflict Between Ethics & Law: Psychologists are prohibited from engaging in activities, however 'lawful', that “**would justify or defend violating human rights**”

# American Psychological Association

## Harsh Interrogations 2015

- Prohibits participation in conducting, supervising, assisting, facilitating or being present in any national security interrogation
- Redefines the *cruel, inhuman, or degrading treatment or punishment* to be in accordance with UN Convention rather than 1994 US Reservations to treaty co-opted by Bush administration
- Psych can only provide services in settings in which torture occurs and other cruel inhuman or degrading treatment or punishment if they work directly for persons being detained or an independent 3<sup>rd</sup> party seeking human rights protections

# American Psychiatric Association and American Psychological Association Positions on Capital Punishment

# World Psychiatric Association 1989

## Psychiatrists

- Refuse to enter into any relationship with a prisoner, other than one directed at evaluation, protecting or improving their physical and mental health,
- Must refuse to cooperate if some third party demands ' actions contrary to ethical principles.
- Should not participate in assessments of competency to be executed evaluations
- Participation of psychiatrists in any such action[actions connected to execution] is a violation of professional ethics.

# Madrid Declaration

## 1996 amended through 2011

- Psychiatrists should not under any circumstances participate in legally authorized executions nor participate in assessments of competency to be executed for convicts receiving the death penalty

# Current Positions

- APA/AMA forbid participation in a legally authorized execution, but such participation is narrowly defined
- They have not taken a position on competence to be executed (Am College of Physicians and Council of Medical Society NYS have)
- Surveys of forensic psychiatrists show divided position, slight majority see no ethical problem (Rosner)



# Position Statement on Moratorium on Capital punishment in the US reaffirmed in 2014

- Whereas psychiatrists, due to their involvement in and familiarity with the criminal justice system, have become increasingly aware of the weaknesses and deficiencies of the current capital sentencing process including considerations in regard to the mentally ill and developmentally disabled;
- The APA endorses a moratorium on capital punishment in the United States until jurisdictions seeking to reform the death penalty implement policies and procedures to assure that capital punishment, if used at all, is administered fairly and impartially in accord with the basic requirements of due process.

# AMA 2016

- The AMA has ***not*** called for a moratorium on capital punishment
- “the AMA’s long-standing tradition to remain neutral on matters that are considered to be nonmedical but issues of society at large and that are highly divisive, such as capital punishment.”

# AMA (2016) Actions of Physician Participation in Capital Punishment

- Would directly cause death of condemned
- Would assist, supervise or contribute to ability of another to directly cause death of condemned
- Could automatically cause an execution to be carried out on a condemned prisoner
- Determine prisoner's competence to be executed—as one aspect of information considered
- Treating a condemned prisoner declared incompetent to be executed for purpose of restoring competence

# AMA (2016) Actions of Physician Participation in Capital Punishment

## Specific roles

- Determine prisoner's competence to be executed— as one aspect of information considered
- Treating a condemned prisoner declared incompetent to be executed for purpose of restoring competence
- Direct participation in execution through prescribing/administering medication, monitoring vital signs, attending/observing, rendering technical advice....

# AMA (2016) Actions of Physician Participation in Capital Punishment

- Actions that do not constitute physician participation in execution
- Testifying as to prisoner's medical history, diagnoses or mental state as they relate to competency to stand trial
- Testifying as to relevant medical evidence during trial
- Testifying as to medical aspects of aggravating or mitigating circumstances during penalty phase of a capital case
- Testifying as to medical diagnoses related to legal assessment of competence for execution
- Responding to voluntary request of condemned person to relieving acute suffering while awaiting execution
- Or providing medical intervention to mitigate suffering of an incompetent prisoner due to psychosis or other illness

# The Death Penalty and Human Rights

# Legal Flaws in Death Penalty Cases

- As of 12/15 at least 156 innocent people on death row released (deathpenaltyinfo.org)
- Unknown number of innocent persons still on death row or executed
- Racial minorities and lower SES more likely to receive death sentence (Glaser et al., 2015)
- Fallibility of eyewitness testimony (Liptak, 2011)
- Continued variability across states in on legal definition of and criteria for legal competency (Wood et al, 2014)

# Socioeconomic & Cultural Inequities

- Many defendants from poor communities were never evaluated for MR/IDD prior to age 18 → not able to provide diagnostic criteria
- Standardized tests for intelligence and mental health based on white, English-speaking, U.S. born, middle class populations → cultural bias
- Test bias → over-or under diagnosed of poorly educated and cultural minorities



# Fallibility of Psychological Tests in Capital Cases

- Most MR/IDD tests are relative *not* absolute:
  - The degree to which a defendant's score is similar to scores of others diagnosed with disorder
- Psychologists disagree on cut-off score for MR/IDD
- States differ in their definition of MR/IDD
- Diagnosis requires below-average intelligence *and* lack of adaptive skills *prior to age 18* although DSM-V now permits diagnosis for onset cases in which brain impairment caused by accidents or disease
- DSM-V recommends evaluations based on age, gender and socioculturally matched peers; however the extent to which this creates differential thresholds that promote social justice has not been studied

# Fallibility of Tests Predicting Future Violence

- Psychological tests for violence are probabilistic
  - Based on population averages (e.g. the percent of people scoring high on a test that commit future violent acts) *not* on individual test performance or behavior
- Data show psychologists cannot predict future dangerousness with any certainty
  - Tests do not include situational factors
- Jury predictions are similarly unreliable:
- Between 1995 – 2006 future violence was alleged as an aggravating factor in 77% of capital prosecutions resulting in 80% jury death sentence decisions (Shapiro, 2008) A study by Vann (2011) indicated jurors were 97% of the time wrong in assessments of dangerousness
- Best (but unreliable and average based) predictor of future violence is past violence → unjust assumptions that a guilty verdict is evidence of future crimes
- History of violence based on criminal records (but with unfair arrest and prosecution of poor and ethnic minorities, these data are more likely to support as an aggravating factor)
- Is Sentencing decisions based on probabilistic evidence ethically justifiable in making a categorical (yes/no) decision regarding an individual's future dangerousness?

# Fallibility of future violence predictions in Capital Cases

- 9 common assessment tools to predict violence had only moderate levels of predictive efficacy (Yang et al., 2010)
- Assessment tools produce **relative** scores based on comparison with group scores.
- Opinions based on actuarial/demographic data produce **probabilistic** scores
- By contrast, the ultimate decision before the court is **categorical**: Future violence will or will not be judged as an aggravating factor leading to the death penalty

# Does Involvement in Capital Cases Violating Medical & Professional Ethics?

# Does Participation in Capital Cases Violate the spirit of the Hippocratic Oath

*“I will follow that system of regimen which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous.”*

If one’s professional service may lead to execution, Is it ethical for a psychiatrist to:

- Conduct a competency assessment?
- Evaluate potential for future violence?
- Provide treatment during a murder trial or prior to sentencing?

# APA Ethics Code (2010)

If one's professional service may lead to execution, Is it ethical for a psychologist to:

- Conduct a competency assessment?
- Evaluate potential for future violence?
- Provide treatment during a murder trial or prior to sentencing?
  
- Does psychologists' participation in death penalty cases violate Standard 1.02 on resolving conflicts between ethics and law?
  
- Under no circumstances may this standard be used to justify or defend violating human rights

# Does US Law Provide Adequate Legal Protections?

US Law provides protections distinguishing involvement in US death penalty cases differ from interrogation of military detainees

- Right to an attorney
- Habeas Corpus
- Right against self-incrimination

The above assumes that all capital case defendants irrespective of SES, race/ethnicity and mental status have access to well qualified attorneys, that courts fairly grant habeas corpus briefs, and that police interrogations are not coercive

# Is the “Neutrality” of Psychological Assessment Morally Justified?

- Some argue that assessments of intelligence and future violence though flawed, are “neutral” → does not determine whether a judge or jury will sentence a prisoner to death
- Milgram experiments diffusion of responsibility in which deflecting the inhumane actions of the state (Howard)
- This is naïve or self-serving at best when the jury relies on the presumed expertise of psychologists to inform their judgments



# “If we don’t do it, others will”

- Participation of well-trained psychologists enhances the accuracy of assessments which would otherwise rely on capricious and non-professional judgments
- Psychiatrists and other mental health professionals will continue to conduct these assessments
- The flaws in these assessments do not over-ride their importance to the court
- However, although the legal system provides basic protections to rectify flawed evaluations, the possibility of entering new evidence or appeals may be cut short by
  - Lack of funds for appeals
  - Lack of competence legal aid attorneys
  - Death

# The Current Process is Unjust

- Even if Americans disagree on whether the death penalty itself is immoral
- The inequitable killing of innocent persons, the poor, racial/ethnic minorities, and those with mental disorders by their government is a flagrant violation of fair treatment in the basic rights of individuals to life and liberty

# Should Psychiatrists/Psychologists Refuse to Participate in Death Penalty Cases?

- Data suggests that issues of forensic practitioner involvement in military interrogations and death penalty assessments are morally equivalent
- Participation while often doing good can also do harm by leading to the execution of individuals under an unfair legal system
- Continued social inequities in arrests for capital crimes and death penalty sentencing creates a context in which participation helps to justify and defend the continued violation of human rights


# Lessons from the Boycott of Death Penalty Drugs


- In 2013 the European boycott of death penalty drugs lowered the rate of US executions since they could not meet 8<sup>th</sup> Amendment prohibition against cruel and unusual punishment
- In 2016 Pfizer blocked the use of its drugs in executions
- In 2017 Arkansas executions were halted due to lack of drugs

# The Moral Question

- Should the APAs take a moral stance and prohibit their members from participating in an inequitable legal process whose inconsistencies lethally violate the human rights of defendants in capital cases?

# Questions & Discussion

 The image part with relationship ID rId2 was not found in the file.

 The image part with relationship ID rId2 was not

# Selected Bibliography

- Arboleda-Florez, J. (2006). Forensic psychiatry: Contemporary scope, challenges and controversies. *World Psychiatry*, 5, 87-91.
- Fisher, C. B. (2013). Human rights and psychologists' involvement in assessments related to death penalty cases. *Ethics & Behavior*, 23(1), 58-61. DOI: 10.1080/10508422.2013.749761.
- Fisher, C. B. (2017) *Decoding the ethics code. 4<sup>th</sup> Edition*. Los Angeles; Sage Publications
- Greenspan, S. & Woods, G. W. (2014) Intellectual disability as a disorder of reasoning and judgment: The gradual move away from intelligence. *Current opinion in psychiatry*, 27, 110-116.
- Glaser, J., Martin, K. D. & Kahn, K. B. (2015). Possibility of death sentence has divergent effect on verdicts for Black & White defendants. *Law & Human Behavior*, 39 539-546.
- Howard, J. (2016) Should psychiatrists perform competency-to-be executed evaluations? *American Journal of Psychiatry* 11, 3 - 3,
- Liptak, A. (2011, November 3). Justices weigh judges' duties to assess reliability of eyewitness testimony. *The New York Times* (New York Edition), p. A20.
- Perlin, M. L. & Lynch, A. J. (2016). The death penalty. In R. Rosner & C. L. Scott (eds). *Principles and practice of forensic psychiatry 3<sup>rd</sup> edition* (pp 91 – 98). NY: CRC Press.
- Perlin, M. L., & Weinstein, N. (2016). The right to refuse treatment in a criminal setting. In R. Rosner & C. L. Scott (eds). *Principles and practice of forensic psychiatry 3<sup>rd</sup> edition* (pp 593 – 602). NY: CRC Press.
- Piel, J. ., Leong G. B. Leong, & Weinstock, R. (2016). Competence assessment. In R. Rosner & C. L. Scott (eds). *Principles and practice of forensic psychiatry 3<sup>rd</sup> edition* (pp 99 - 104). NY: CRC Press.
- Rosner, R. (2016). A conceptual framework for forensic psychiatry. . In R. Rosner & C. L. Scott (eds). *Principles and practice of forensic psychiatry 3<sup>rd</sup> edition* (pp 1-6)). NY: CRC Press.
- Salekin, K. L., Olley, J. G., & Hedge, K. A. (2010). Offenders with intellectual disability: Characteristics, prevalence and issues in forensic assessment. *J Mental Health Research in Intellectual Disabilities*, 3, 97-116.
- Scott, C. L., & Resnick, P. J. (2016) Clinical assessment of aggression and violence. In R. Rosner & C. L. Scott (eds). *Principles and practice of forensic psychiatry 3<sup>rd</sup> edition* (pp 623 – 631). NY: CRC Press.
- Wood, S. E., Packman, W. Howell, S., & Bonger, B. (2014). A failure to implement: Analyzing state responses to the Supreme Court's directives in *Atkins v. Virginia* and suggestions for a national standard. *Psychiatry, Psychology, & Law*,
- Yang, M., Wong, S.C.P. & Coid, J. (2010). The efficacy of violence prediction: Analytic comparison of nine risk assessment tools. *Psych Bulletin*, 136, 740-767.
- Yanofski, J. (2011). Setting up a death row psychiatry program. *Innov Clin Neurosc*, 8, 19 – 22.