

book, it rests in this section, which is designed to provide legal professionals with background clinical information. The chapter contains a cursory summary of several theoretical clinical orientations, as well as simplistic descriptions of mental disorders. The authors conclude the chapter with a discussion of matters relevant to mental health testimony, including admissibility of testimony, examining the substance of expert testimony, expert qualifications, and evidentiary limitations.

The remainder of the text, Parts III through VII, covers a wide-array of topics pertinent to forensic psychiatry, including competency, diminished culpability, dangerousness, standards of psychiatric care, mental impairment under the ADA, and mental harm under workers' compensation schemes. Part III, "Criminal and Civil Incompetency," which describes current law in these areas, is presented with sufficient clarity and detail to further the understanding of novice and experienced forensic mental health professionals alike. There is a discussion about the merits of mental health expert testimony, how expert testimony is weighed by the courts, and limitations of expert evidence and testimony. The authors review various legal doctrines, such as criminal confessions and fitness to stand trial, that may be tendered during the trial, sentencing, and appeal stages of litigation. Legal matters involving mental health and special populations, including juveniles and people with mental retardation, are also examined. Parry and Drogin also review aspects of civil mental health law, including guardianship, conservatorship, payees, and standards for various civil capacities (e.g., testamentary and contractual).

Part V, "Dangerousness," illuminates the controversy about situations in which dangerousness evaluations are requested, including when insanity acquittees seek placement in less-restrictive environments. The authors examine the concept of quasi-civil commitment in the contexts of insanity acquittees and sexually and mentally disordered offenders.

Mental health professionals may have particular interest in the discussion of the prediction of future violence in mentally ill individuals. The authors state that, although forensic mental health evaluators presently use clinical and actuarial methods to assess an evaluatee's potential for violence, the trend is moving away from clinically based predictions of dangerousness. The authors also describe research that implies

that jurors tend to find clinically based assessments more convincing.

Although forensic psychiatrists are unlikely to read this manual cover to cover because of the density of the material, the text may serve as a valuable resource for mental health law. The organization of the text facilitates easy access to comprehensive information. Each chapter begins with an introduction to a specific legal concept, followed by comprehensive summaries and analyses of the relevant law. There is a minor overlap in content across chapters. The book's organization helps readers understand the relatedness of important forensic mental health topics.

Each part of the book is self-contained; readers do not have to examine it in any particular order to glean important information. The material is well researched, and the authors include a useful glossary of key terms, court decisions, and legislation for easy reference. They might consider including a legal case index in future editions to facilitate accessing relevant information.

Although the book is designed to meet the needs of legal professionals, its content, style, and organization make it a valuable legal reference guide for forensic mental health professionals and trainees.

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Reference

1. Parry J: National Benchbook on Psychiatric and Psychological Evidence and Testimony. Chicago: American Bar Association, Commission on Mental and Physical Disability Law, 1998

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Insanity: Murder, Madness, and the Law

By Charles Patrick Ewing. New York: Oxford University Press, 2008. 224 pp. \$39.95.

Professor Charles Patrick Ewing, an attorney and forensic psychologist, wrote *Insanity: Murder, Madness, and the Law* to examine one of the more controversial topics in forensic mental health. He describes how the insanity defense was proffered in

regionally and nationally publicized homicide cases that took place between 1963 and 2001. He states that he wrote the book to dispel myths about the insanity defense. The cases, due to their controversial nature, had extensive public records available for review. Each case discussion contains the background of the homicide perpetrator, circumstances of the offense, insanity defense criteria used during the trial and, most instructively, excerpts from expert testimony at each trial that allow readers to appreciate how expertise can be used and, in some cases, misused.

The case histories are those of Jacob Rubenstein (Jack Ruby) who killed Lee Harvey Oswald, the assassin of President John Kennedy; Robert Torsney, a New York City police officer who killed an unarmed teenager; David Berkowitz, better known as Son of Sam, who killed six people in New York City; John Wayne Gacy who killed 30 or more young men in Chicago; Arthur Shawcross, known as the Genessee River Killer, who raped and strangled 11 women in upstate New York; Scott Panetti who killed his in-laws in Texas; Eric Smith, a 13-year-old who fatally beat and sodomized a 4-year-old boy in New York; Andrew Goldstein, who pushed an innocent bystander in front of an oncoming New York City subway train; Eric Michael Clark, who shot and killed an Arizona police officer; and Andrea Yates, who drowned her five children in Texas.

The author uses the book's preface and introduction to summarize the history of the insanity defense, to describe controversies about its use, and to review how insanity defense criteria have changed over the past century and a half. He reports that, despite public perception that the insanity defense is frequently proffered by criminal defendants, national surveys indicate that it is used in less than one percent of criminal cases and is successful in only 25 percent of those. My impression is that other surveys have reported that the rate at which forensic mental health evaluators opine that examinees meet insanity defense criteria is about 10 percent. For example, in 2009, the Ohio Department of Mental Health reported that of 1,326 cases in which an expert opinion was given about the insanity defense, 130 cases, or 9.8 percent fulfilled the legal criteria (Baker RN, Ohio Department of Mental Health, personal communication, March 30, 2010). It was surprising,

therefore, to learn that Ewing reports an even lower rate in his own practice. He states on page xv of the Preface, "Out of the many hundreds of defendants I have examined for this purpose, I can count on 2 hands, give or take, the number I found actually met the legal standard for insanity." He does not explain the discrepancy between his results and the survey data he reports.

Insanity, contends Ewing, is used as a defense against various charges and, at times, the defense is uncontested, especially when a defendant is accused of committing a nonviolent offense. Although the media publicize homicide cases in which the insanity defense is proffered to mitigate the offense, homicide, explains the author, is prevalent in about one-third of insanity defense cases. In the 10 cases presented, only Torsney and Yates were adjudicated insane. David Berkowitz rejected his attorneys' intent to raise the insanity defense. He and the seven other defendants were found guilty and sentenced to prison. Ewing correctly states that defendants found not guilty by reason of insanity frequently spend as much or more time confined in forensic mental health units or under strict court supervision than do those persons who have been found guilty of the same offense.

The case studies are of exceptionally heinous offenses that resulted in a battle of expert witnesses at trial. The author notes that in many of these cases, aggressive defense attorneys used insanity as a defense of last resort and in some cases, zealous prosecutors attempted to block an insanity verdict, despite strong evidence, by retaining an expert to refute defense counsel's position. Some of the expert testimony samples in this book are painful to read, especially when prominent experts attempt to support awkward opinions. These cases are negatively viewed by the public and reinforce myths that expert witnesses are so-called hired guns who will support or refute the insanity defense based on other than scientific reasoning.

In his epilogue, Ewing cogently categorizes some of the lessons to be learned from these cases. He reminds the reader how challenging it is for juries to wade through technical and sometimes unintelligible testimony before it can render a verdict. He also offers his opinions about which cases resulted in verdicts that seem to fit or not fit the evidence presented.

The highlight of this interesting, extensively referenced and readable book remains the fascinating cases that Ewing dissects in an illuminating fashion.

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Law for the Expert Witness

By Daniel A. Bronstein. Third Edition. Boca Raton, FL: CRC Press, 2007. 230 pp. \$104.95.

The third edition of *Law for the Expert Witness* is described by Daniel Bronstein as a primer on the role of the expert witness in the modern U.S. court system. The book, which was written for professionals and students of various disciplines, including medicine, science, engineering, and industry, focuses on key situations that an expert witness may encounter.

The author organized the book into three main sections and two appendices. He uses case law to illustrate key concepts. The first section, titled "Before Trial," deals with legal procedure, including the purposes and methods of discovery. An initial chapter that briefly outlines the process of filing a lawsuit is followed by a discussion of how the rules of discovery are applied to paper and electronic records. The author reviews other types of evidence that are subject to discovery, such as interrogations and physical and mental examinations. He offers comprehensive reviews of depositions, pretrial conferences, and the consequences of not cooperating with discovery.

"Rule of Evidence," which describes evidentiary procedures and considers evidence-related problems that may arise during the trial, is the second and largest section of the book. Bronstein covers general trial concepts, including standards of proof and rules of evidence. He provides a detailed discussion about the characteristics and role of the expert witness, including how expert opinions are introduced; the admissibility of scientific tests, experiments, and exhibits; and the role of cross-examination. The section also contains a concise informative description of how experts manage their practices, including how they integrate scientific literature, physical evidence, and data into

expert opinions. Several small chapters are devoted to hearsay and exceptions to the hearsay rule. The author uses case law examples to illustrate many of the important ideas that are presented throughout the book.

The book's third section, "Suggestions and Hints for the Expert Witness," includes a discussion of useful strategies for experts who are preparing to appear in court, including planning and presenting direct testimony and handling cross-examination. Also, there are two appendices that contain sections from the Federal Rules of Civil Procedure and Federal Rules of Evidence that the author extensively refers to throughout the book when he introduces case examples.

Bronstein's book is a resource for experts of technical, industrial, scientific, and scholarly disciplines; it does not emphasize forensic mental health. Some of the evidentiary aspects are not necessarily pertinent to forensic psychiatry. Much of the commentary that is specific to expert medical and psychiatric testimony tends to be found in case examples or in exceptions to specific case examples. Also, the author's description of legal procedure is more detailed than is necessary for a forensic psychiatrist. As such, the book provides a level of background that may allow the psychiatric expert witness greater understanding of the workings of the legal process but may not contribute significant practical information.

The book focuses primarily on expert testimony during discovery and trial. The author does not examine report preparation and writing in detail. On rare occasions, the reader may question whether the discussions that accompany case examples are excerpted from actual cases or from the author. This has to be discerned via context and wording, as clear attribution is not always present.

The author offers helpful hints and tips for expert witnesses in the last section of the book, which is relatively brief. An expansion of this section would be welcome in future editions. Although students and early career experts are likely to find the tips more helpful, veteran experts may also learn useful concepts from the author.

Overall, *Law for the Expert Witness* presents useful information about situations that an expert witness, such as a forensic psychiatrist, is likely to encounter in practice. The book, which is written in a clear, concise manner, illustrates potentially confusing legal concepts with interesting case examples. Some of