

Book Reviews

YOU'RE THE JURY. By Judge N Ehrenfreund and L Treat. New York: Henry Holt and Company, Inc., 1992. 205 pp. \$9.95.

Reviewed by C. Dennis Barton, Jr.,
MD

Written by a judge and the founder of the Mystery Writers of America, *You're the Jury* combines the rules of how a trial is conducted with the intrigue inherent in how a jury arrives at a verdict. The book, which ultimately attempts to illustrate the responsibilities imposed on jurors, is a "do it yourself" manual of sorts in that it allows the reader to serve vicariously in the role of juror.

Since Judge Ehrenfreund was involved in most of the actual trials upon which the book is based, the 12 cases are first presented in an abbreviated version with quotations of direct testimony. This is followed by questions about the evidence presented and an analysis of both the tactical strategies used and the points of law to be considered in arriving at a verdict. Before deciding the case, the reader is first referred to the "jury instructions" found at the end of the book. Finally, the vicarious juror is allowed to compare his or her verdict with that returned by the original jurors and their reasoning.

The authors present an interesting collection of both civil and criminal cases and consider a variety of issues. The

content of these cases ranges from murder trials to those involving kidnapping of a daughter involved in a cult, to cases addressing diminished capacity, assisting suicide, and the battered spouse syndrome.

While some points of interest to psychiatry are raised (e.g., mental state in specific intent crimes, diminished capacity, burden of proof and level of persuasion, use of expert testimony), they are covered in little detail and without extended analysis. Although this book is entertaining to read, it will be of limited value to experienced forensic psychiatrists interested in the finer points of case law. Its intended audience is more general. To the degree that its purpose is to introduce citizens to the process by which a jury works in the United States and to entertain "fans of true crime-and-courtroom drama," however, *You're the Jury* succeeds.

HANDBOOK OF PSYCHOLOGY AND LAW. Edited by DK Kagehiro and WS Laufer. New York: Springer-Verlag. 1992. 626 pp. \$89.00.

Reviewed by James E. Olsson, PhD

Kagehiro and Laufer have taken on a considerable task in surveying the burgeoning field of psychology and law and can be proud that they have achieved their stated goal: "To acquaint legal scholars and practitioners with the range of empirical research being conducted

on legal issues and to acquaint psychologists with the range of legal issues to which psychological theories and research methodologies are applicable." In fact, the authors appear eager for more work when they assert in the preface that the research in the field is too narrowly focused upon the topics of expert witness, jury decision making, and eyewitness testimony. Perhaps in future editions, they will not have to make this complaint.

Approximately one-half of the 53 contributors are associated with university-based departments of psychology, and the remainder are associated with law schools or private agencies. Overall, the quality of presentation appears to be quite even and most chapters have a scholarly and research-oriented focus. The text is organized into nine areas of law with a final section covering psycho-legal professional issues. While at first this legal format appears daunting and unfamiliar to a mental health professional, it makes sense once one gets further into sections such as Constitutional Law, Legal Procedure, and Law of Evidence. For example, the latter section covers such relevant issues as eyewitness evidence and testimony and the role of the expert witness. The section on Criminal Law not only covers *mens rea*, criminal responsibility, and diminished capacity on both practical and theoretical levels, but also manages to present a chapter concerning racial discrimination and the death penalty. In addition, a later section presents two chapters focusing upon discrimination law and relevant research finding. Other topics that

one might not expect to find included in such a text are grandparent visitation rights, home confinement with electronic monitoring, and compliance with federal personal income tax laws.

While the authors have done a scholarly and comprehensive job of presenting their survey of the field of psychology and law, would their book serve the purposes of the intended audience? In this reviewer's opinion, it would undoubtedly be a quite appropriate text for a graduate program in psychology and law and as a resource text for scholars and researchers from either a psychological or legal perspective. However, this text should not be confused with other texts, such as Weiner and Hess' *Handbook of Forensic Psychology*, which was written for clinical practitioners in the field of forensic psychology and psychiatry. This latter text serves to highlight the differences in focus that practicing forensic specialists have as opposed to researchers and scholars in the field. This is not to say, however, that practitioners would not find this text valuable in a number of respects, and it is likely that lawyers specializing in mental health law and also practicing forensic psychiatrists or psychologists might also find portions of this text of value. In any case, the editors of this text should be congratulated for producing a survey of a field that contains contributions of high quality, which in total provide a comprehensive review of this rapidly growing field.

REVIEW OF CLINICAL PSYCHIATRY AND THE LAW, VOLUME III.

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Edited by RI Simon. Washington, DC: American Psychiatric Press, 1992. 376 p. \$38.50.

Reviewed by Jay Kuten, MD

The present volume is the third in a series and carries out exactly the aim explicit in its title. This is a series of review articles of general topics in the field of forensic psychiatry. However, to make that statement is to say that a Ferrari is a sports car. Throughout, these articles are well written, thoroughly researched, and carefully edited. And while each separate volume stands alone there is a thread that stitches them together. To begin, each of these volumes has a unique dedication. From their personal nature, successively to the memory of Dr. Simon's aunt, Mary Simon Moorad, to his wife, Anne, and in the present volume, to Dr. Jonas Rappeport, as the "father of American forensic psychiatry" we can surmise that these books represent no ordinary effort, but are rather a labor of love.

The volumes are divided in sections, each summarizing what is known in a specific area of forensic psychiatry. Each subsection has its own editor and distinguished contributors. Past volumes have dealt extensively and effectively with issues such as confidentiality, duty to warn, psychotherapy malpractice, and involuntary civil commitment. The present volume begins with a section on suicide assessment edited by Dr. Simon himself. In just a short 60 pages, the

author has brought together in one place probably as much information on the subject of suicide assessment as exists anywhere. In addition, his article also deals with intervention, management, and the legal issues involved in liability and the defense against suicide negligence. I found most interesting Dr. Simon's point that "contracting" with patients, while useful as a means of estimating the strength of the therapeutic alliance may not be as useful as a means of preventing suicide.

The second section is edited by John R. Lion, M.D., and deals with psychiatric hospitalization, illuminating legal dilemmas of specific administrative issues. Several articles explore developing controversies including: the management of difficult and chronic patient populations in the VA Hospital; the competing priorities of budgetary constraints and patient care; the complex concerns of privacy considerations; and staff security when the patients are people with AIDS. Two articles on psychiatric liability conclude this second section, covering the range of hospital-centered litigation, including the problem presented by the *Osheroff* case. Here, as throughout, pat answers are eschewed and defensiveness discouraged in favor of humanistic considerations. The authors suggest a continuation of medicine's historic doctrine of *primum non nocere* (even though the AMA has dropped this doctrine from its Principles of Ethical Practice), and a method of informed practice that respects patient autonomy as a structure for complex decision making even in apparently impossible situations.

It is this attention to higher ethical principles that leads naturally to the next section edited by Henry Weinstein, M.D., J.D., on dual loyalties. These articles test some of the limits of the psychiatrist's role in a variety of settings and the demands made on the psychiatrist in terms of ethics and loyalties that may themselves be in competition. Necessary maxims that may guide us in turbulent waters are "Know thyself" and even more so, "Physician, heal thyself". Psychiatrists must use their own minds as their instruments, and yet they are empowered to enforce social goals. Because of the potential for abuse that exists, it is clear that psychiatrists, particularly forensic psychiatrists, must subject themselves to constant scrutiny to maintain clarity and strive for objectivity. Dr. C. Robert Showalter's chapter discussing the ethics of evaluating a defendant in a death penalty case highlights dual loyalty issues and offers suggestions for dealing with such matters in an ethical way.

For this reviewer, the most controversial article in the volume is the analysis by Sanford L. Drob, Ph.D., of Dr. Robert Jay Lifton's "The Nazi Doctors." He applies Lifton's concept of "doubling" chiefly, and I believe, incorrectly, to psychiatrists in correctional institutions who may occasionally lapse in their ethical obligation to protect the rights of prisoners. "Doubling" was the name Lifton gave to the set of intrapsychic defenses employed by the Nazi doctors who actively participated in the Final Solution, enabling them to live "normal lives"; even to be "conscientious" in

their "medical practices" outside the Nazi killing apparatus. Lifton himself described the career of Eduard Wirths, chief doctor at Auschwitz, who began by experimenting on human guinea pigs at Dachau and ended by supervising selections for the gas chamber at Auschwitz. This "dedicated doctor" was flawed in his moral rectitude, his sense of "correctness," his self-righteous "innocence" that enabled his racist views that Jews, Gypsies, Slavs, non-Aryans—in short, everyone else—were lesser human beings and therefore unworthy of compassion. There is as wide a moral chasm between such monsters and ourselves, as there is between most of us with oedipal wishes and those who are actual parricides. Yet, there *is* a lesson to be drawn as proscriptive for the temptation to the inhumane toward which we all may at moments be drawn. Perhaps this lesson is better learned not from Lifton but from Lord Acton's statement "Power corrupts and absolute power corrupts absolutely."

The penultimate section deals with informed consent. Written by a single author, John Malcolm, J.D., who is also the section editor, this essay provides a considerable amount of clarity in the complex understanding of the concept of informed consent—its history, its legal bases, its application.

The section that ends this and the preceding volumes is entitled "Features" and contains a very timely review of recent court decisions from federal and state jurisdictions in the major areas of the field. Steven Bisbing, Psy.D., J.D., does yeoman service in producing this

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very helpful work that is both scholarly and straightforward.

The volume closes with expert opinion—here on therapist sexual misconduct, with excellent opposing arguments by Thomas Gutheil, M.D., and Robert Sadoff, M.D., followed in turn by Attorney Jeffrey Robertson's well-wrought presentation of a trial case and the law in the matter of therapist/patient sex.

Each of the volumes ends with a very helpful case index and subject index. I would recommend these volumes to every forensic psychiatrist who wants to keep up with the field and to every general psychiatrist who would like to be on

the cutting edge and obtain an expert perspective on the major issues in forensic psychiatry as they effect daily practice. These volumes are surely of value in educating practitioners not toward becoming defensive in their practice, but to enable them to be reasonable and thoughtful in their care of their patients. As a series these books remind me of the old-fashioned serial movies of my childhood. My only regret is that there are not more immediately available. If I have anything to complain about, it is that Volume III, unlike Volumes I and II, does not contain an afterword by the editor telling us what is coming next.