

Criminal Mental Health and Disability Law, Evidence and Testimony: A Comprehensive Reference for Lawyers, Judges, and Criminal Justice Professionals

By John Parry, JD. Washington, DC: American Bar Association, 2009. 462 pp. \$110.00.

This book, which addresses mental health and discrimination law within the criminal domain, stems from the American Bar Association's series dedicated to mental disability law. The subtitle stipulates the intended audience, which includes forensic psychiatrists. The book consists of 13 chapters arranged in three parts and concludes with a glossary of key terms, definitions, and Supreme Court decisions. Several segments are minimally revised versions of earlier contributions to this series.

Part I, "Overview," begins with a chapter devoted to the history of civil rights development and the road to legislation that protects the mentally ill and ends with a synopsis of mental health and disability law. The latter is a key chapter, with coverage of the Americans with Disabilities Act (ADA); the Rehabilitation Act and reviews of criminal capacity; diminished culpability (including mention of controversial syndromic diagnoses, such as television intoxication); dangerousness; and the care, treatment, and conditions experienced by individuals in confinement. Accommodations for defendants and inmates with disabilities are stressed.

Part II, "Substantive Law and Standards," consists of four chapters. The first, "Criminal Incompetency," is the chapter most plagued with proofreading errors, although it provides an interesting discussion and case law review of capacity as it applies to juveniles and extended jurisdiction juveniles. "Insanity and Diminished Capacity" is a thorough discussion of diminished capacity and jurisdictional variation in applying the *Ake v. Oklahoma* decision.¹ "Dangerousness in the Criminal Law" sensitively addresses the challenge of predicting dangerousness and examines the quasi-civil involuntary commit-

ment application of dangerousness, which, in some states, requires indefinite hospitalization of sex offenders who are still deemed dangerous when their sentences have ended. Parry is especially adept at pointing out the entanglements of logic in these laws across jurisdictions, while projecting a pessimistic tone regarding actual rehabilitation of sex offenders and treatment availability.

"Jails, Prisons, and Secure 'Treatment' Facilities" paints a dour picture of the state of affairs, treatment availability, the stigma behind locked doors, and litigation outcomes including class action lawsuits. Parry compares the standards of proof outside of correctional settings with those within and examines the deliberate-indifference standard. This chapter rivals forensic textbooks in covering this important material and is written for both novice and more experienced forensic experts. Readers will appreciate the uphill battle faced by incarcerated individuals in obtaining the rights that are more readily granted to the disabled mentally ill in noncorrectional venues.

Part III, "Expert Evidence and Testimony," begins with a chapter on admissibility that bemoans the difficulty litigants face in obtaining competent and unbiased expert testimony. There is an exceptionally intelligent discussion of the *Daubert-Kumho*²⁻⁴ line of cases and an elementary review of the training and licensure of mental health expert witnesses. "Mental Health Diagnoses and Assessments," a glimpse into the legal profession's view and understanding of mental disorders and forensic mental health professionals, is especially interesting despite its shortcomings. The references related to neuroimaging in the courtroom could have been updated to 2009, and the discussion might have expanded beyond capital cases and the prediction of repeated violence. The description of Axis V, the Global Assessment of Functioning, omits the symptom severity aspect of the instrument. The author mischaracterizes the application of Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria sets, using borderline personality disorder as an example. Also troubling is the definition of the neurologic examination, which gets short shrift, and omits cerebellar testing. There is no mention of the MMPI-RF (Minnesota Multiphasic Personality Inventory-Restructured Form) and WAIS-IV (Wechsler Abbreviated Scale of Intelligence-Fourth Edition) and no meaningful discussion of the flexible versus fixed neuropsychological testing alternatives.

A typographical error in “Evidence of Insanity and Diminished Capacity” suggests that mental retardation affects 22% [sic] of the population.⁵ In describing the SADS (Schedule for Affective Disorders and Schizophrenia) as the “commonly used instrument to measure insanity and other types of criminal responsibility,” the author gets it wrong on both counts, and the SCID (Structured Clinical Interview for DSM-IV-TR) is not to be found in the section on diminished awareness and the model penal code.

At first blush, the next chapter, “Dangerousness to Others and Self,” is an odd addition for a book devoted to criminal law, given the typical civil realm for this topic. It hammers on the theme of difficulty in predicting dangerousness that is repeated throughout the book and reiterates material from other chapters regarding expert witness opinion limitations and evidentiary admissibility. “Care and Treatment of Inmates” is internally repetitious, yet successfully highlights the stringency of the deliberate-indifference standard and sovereign immunity as hurdles to successful suits, especially regarding medical malpractice. “Disability Discrimination Involving Inmates in Correctional Facilities” covers Title II of the ADA, the ADA 2008 Amendments, and Section 504 of the Rehabilitation Act. The author includes much practical advice in selecting the proper expert witness and deciding when expert testimony is necessary.

The author includes two chapters that address juvenile law and forensic mental health assessments. The glossary is a one-stop, all-purpose reference that offers terse yet useful summaries of the holdings in several American Academy of Psychiatry and the Law landmark cases.

The publisher used an attractive and easy-to-read font; however, my copy had some pages with uneven inking. There is a detailed table of contents and useful index. Each chapter is heavily referenced with end-of-page footnotes. Several chapters frequently rely on and reference the ABA Criminal Justice Mental Health Standards⁶ that careful and syntopical⁷ readers will want to have handy. Forensic mental health case law from *M’Naughten* (1843) to *Indiana v. Edwards* (2008) is represented. Overall, Parry’s book will serve well as a reference manual or supplementary textbook.

References

1. *Ake v. Oklahoma*, 470 U.S. 68 (1985)
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4. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999)
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6. ABA Criminal Justice Mental Health Standards. Washington, DC: American Bar Association, 1989
7. Adler MJ, Van Doren C: *How to Read a Book* (rev. ed). New York: Simon & Schuster, 1972

Stephen I. Kramer, MD
Winston Salem, NC

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Clinical Neuropsychology in the Criminal Forensic Setting

Edited by Robert L. Denney and James P. Sullivan. New York: Guilford Press, 2008. 414 pp. \$60.00.

(Editor’s Note: In view of the importance of brain injury and neuropsychological testing in today’s legal climate, we are including a second review of this book so that readers may have access to a neuropsychiatrist’s opinion of it.)

The editors of *Clinical Neuropsychology in the Criminal Forensic Setting* have assembled a wealth of information on the theory and practice of forensic neuropsychology in the criminal justice system. The application of neuropsychology in criminal evaluations is a relatively recent phenomenon in forensic mental health. The comprehensive text addresses a range of fundamental topics and is undoubtedly a must-read for any neuropsychologist contemplating working as a forensic expert in criminal cases.

Several factors make the book an important reference for forensic psychiatrists as well. As the field of forensic neuropsychology has evolved over the past two decades, it has become more apparent that a thorough neuropsychological evaluation is critical to a complete diagnostic formulation and opinion in many criminal cases. More specifically, the landmark U.S. Supreme Court decision in *Atkins v. Virginia*,¹ which prohibited capital punishment of defendants with mental retardation, means that an accurate determination of mental retardation can literally be the difference between life and death.