

PSYCHIATRY IN THE EVERYDAY PRACTICE OF LAW

George Parker, M.D.*

Review of *Psychiatry in the Everyday Practice of Law, 4th Edition*

BY MARTIN BLINDER, M.D.

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The relationship between law and psychiatry has a long and colorful history, marked by mutual misunderstanding and significant tensions over the years. The subspecialty of forensic psychiatry was restricted to a few practitioners until recently, when a perceived need of psychiatric expertise led to fairly rapid growth in the number of board-certified forensic psychiatrists.

Accompanying this growth in numbers is an increase in the number and quality of forensic psychiatry publications, and in the past two years, two authoritative textbooks on forensic psychiatry have been published.¹ Still, most residents in psychiatry get little exposure to forensic psychiatry. Similarly, few law students receive formal training in the role of psychiatry in legal practice, though elective courses in law and psychiatry are now available in most law schools. As a result, forensic psychiatrists sometimes struggle to work effectively with lawyers and judges, and vice versa, for each group may have at best a partial understanding of the expectations of the other group.

Much of forensic psychiatry training focuses on the appropriate application of clinical skills in the legal arena and on the development of an appreciation of the conflicts inherent in forensic work. Lawyers could similarly benefit from an understanding of how forensic psychiatrists see their role in the legal system.

Dr. Martin Blinder is a senior psychiatrist who practices in California and has been on the medical and law school faculty of the University of California in San Francisco. He states in the preface to *Psychiatry in the Everyday Practice of Law, 4th Edition*, that his book “is designed to assist the attorney in representing his or her client more effectively” and that the text is based on lectures given by him at the Hastings College of Law. Dr. Blinder’s stated goal is to “provide a

* George Parker, M.D., is associate professor of Clinical Psychiatry and Director of Forensic Psychiatry at the Indiana University School of Medicine.

¹ PRINCIPLES AND PRACTICE OF FORENSIC PSYCHIATRY (R. Rosner, ed., Arnold Publishers, 2d ed. 2003), and TEXTBOOK OF FORENSIC PSYCHIATRY (R.I. Simon & L.H. Gold, eds., American Psychiatric Publishing, Inc. 2004).

logical progression of complexity and mastery of the subject matter as an integral whole.”

Overall, this text is written in a casual, relaxed style that is easy to read. However, the chapters lack focus and largely consist of the author’s commentary on a wide variety of issues in law and psychiatry, drawn from his long personal experience in the field, together with forensic reports from the author’s collection, and brief descriptions of a wide range of reported legal cases. The topics within each chapter are only loosely linked, and it is hard to discern the overall theme of each chapter.

The references cited in each chapter come in the form of footnotes and an appended bibliography at the conclusion of each chapter. The footnotes are fairly up-to-date, but the chapter bibliographies are quite out-of-date, with the chapter on brain damage being the one exception. A large majority of the works cited in the bibliographies are from the 1970s and 1980s and a substantial number come from the 1950s and 1960s.

The book begins with three chapters of introduction to psychiatry. It is clear that Dr. Blinder is a clinician who trained in the era when Freud was the towering influence in psychiatry; Freudian ideas are prevalent throughout these chapters, and reappear on a regular basis through the rest of the text. The descriptions of psychiatric diagnoses are quite simplified and do not fully align with current terminology; for example, the phrase “character disorder” has long been replaced by “personality disorder.” The explanation of available treatments for psychiatric disorders is also quite elementary, particularly with regard to psychiatric medications. Included in this section is his report on a six-year-old boy accused of a violent assault, wherein he concluded that the child’s diagnosis was antisocial personality disorder and that he was competent to stand trial! By definition, antisocial personality disorder cannot be diagnosed in children; its juvenile equivalent, conduct disorder, is very rarely diagnosed in preschool children. It is also highly improbable that any six-year-old could be competent to stand trial; under common law, children under seven years old have an absolute defense based on immaturity.²

The longest chapters in this text are those on criminal behavior and criminal responsibility. Again, the themes of psychological motivations for behavior come through quite clearly, but the themes of the chapters themselves are not so clear. Notable in the chapter on criminal behavior is the author’s report on Daniel White, who in 1978 murdered Harvey Milk, a San Francisco county supervisor. Dr. Blinder concluded that the defendant had “a marked chemical sensitivity” to junk foods, which could be linked to “psychomotor, epileptiform violence in individuals challenged with large amounts of refined sugar,” thus laying the foundation of the infamous “Twinkie defense.”

The chapter on criminal responsibility also includes a limited discussion of incompetence to stand trial, which, according to Dr. Blinder, can be found in

² PSYCHOLOGICAL EVALUATIONS FOR THE COURTS, 418 (G.B. Melton, J. Petrila, N.G. Poythress & C. Slobogin, eds., Guilford Press, 2d ed. 1997).

only “a few” very disturbed or brain-damaged defendants. In Indiana, approximately 100 defendants per year are committed to the Division of Mental Health & Addictions for restoration to competence, which certainly suggests that the issue is not rare.

The chapters of advice to attorneys on various topics, which conclude the book, consist largely of the author’s statements and observations, usually unsupported by references beyond occasional case citations. The chapter on picking juries does include a number of references, but nearly half are from the 1970s and the most recent is from 1990. The chapters on direct and cross-examination of psychiatrists consist largely of sample questions and transcripts of court testimony, with minimal analysis and virtually no references.

In conclusion, this text has an admirable goal, of helping attorneys use forensic psychiatrists effectively and appropriately, but it falls far short of reaching that goal. An attorney seeking to understand the varied interactions of legal and psychiatric issues would do better to read the most recent edition of *Law and the Mental Health System*, from the American Casebook Series³ or perhaps one of the recently published general textbooks on forensic psychiatry, as they are all less expensive than Dr. Blinder’s book and are better organized, more comprehensive, and up-to-date.

³ R. REISNER, C. SLOBOGIN & A. RAI, *LAW AND THE MENTAL HEALTH SYSTEM: CIVIL AND CRIMINAL ASPECTS* (West Group, 3d ed.1999).

