

BOOK REVIEW

Alan R. Felthous,¹ M.D.

A Review of *Psychiatric and Psychological Evidence*

REFERENCE: Shuman, D. W., *Psychiatric and Psychological Evidence*, Shepard's/McGraw-Hill, Inc., P. O. Box 1235, Colorado Springs, CO 80901, 1986, 465 pp. plus 85 pp. Supplement, 1988, \$95.00.

As trial lawyers must know from *voir dire* experience, some potential jurors categorically discount psychiatric testimony. Others question why greater use is not made of testimony from mental health experts, who seek to understand and help people with their psychological problems. Not only laypersons, but also writers in the professional literature both exalt and trash psychiatrists and psychologists as expert witnesses. Some writers present the mental health sciences as a body of valuable theory and knowledge which the legal system has failed to appreciate and apply towards the betterment of mankind. Others advise lawyers how to methodically destroy the witness's testimony and show virtually no appreciation of any contribution the mental health sciences can make towards the just resolution of legal issues.

Daniel W. Shuman, a professor in the School of Law of Southwestern Methodist University in Dallas, Texas, has prepared a book that is written with considerable professionalism and objectivity. It is balanced, well referenced, and scholarly. This is not a promise of psychological omniscience, if only trial attorneys will allow experts to express themselves. Neither is this book another manual on how to undermine a witness's credibility cleverly. The author endeavors to identify strengths, weaknesses, and double-edged features of psychological and psychiatric testimony on various legal issues where a person's mental condition is relevant. Professor Shuman helpfully advises how to make effective use of testimony and what potential deficits or limitations in the testimony ought not go unchallenged.

This well-reasoned, fair, and constructive approach to psychiatric and psychological testimony was, no doubt, one sterling feature taken into consideration by the judges who selected this work for the Manfred S. Suttmacher Award of 1988. The American Psychiatric Association and the American Academy of Psychiatry and the Law confer this high honor annually on the author of an outstanding contribution to the literature on psychiatry and the law.

The book is marvelously well organized. The first of three major parts of the book is an introduction to psychiatry and psychology. Part Two deals with general issues concerning the use of psychiatric and psychological evidence, for example, the qualifications

¹Chief, Forensic Services, and professor, Psychiatry and Behavioral Sciences, University of Texas Medical Branch, Galveston, TX.

of the expert. Eight particular applications of psychiatric and psychological evidence are presented in Part Three. These include, among others, personal injury litigation, competence, and civil commitment.

In all chapters, the organization for each topic and subtopic is essentially the same: (1) the topic, such as the legal standard for the insanity defense; (2) the role of the expert in addressing the issue; (3) the basis or relevance of the expert's contributions; (4) the limitations of the expert; and (5) the expert's testimony.

Every section within a chapter is numerically coded and the book is extensively cross-referenced. At the end of each chapter is a list of readings, categorized as books, articles, cases, constitutions, statutes, or rules. In addition, at the end of the book is a complete list of cases, a list of statutes, and a list of rules and regulations. WESTLAW search references keyed into sections are listed at the end of each chapter. An appendix near the end of the book provides guidance for using the WESTLAW system to research topics on psychiatric and psychological evidence. Affixed to the back cover is an annual Cumulative Supplement, with updated annotations and references.

Although the book can be read from cover to cover, it is somewhat dry and repetitive for armchair reading. It should prove most useful as a handy reference and an authoritative resource, to be used by the legal practitioner or expert as particular legal issues arise. Supplemented by lecture and thoughtful discussion, the book can also be used as a course textbook.

Part One is an overview of the professional fields of psychiatry and psychology. Written by Kevin W. Karlson, J.D., Ph.D., a forensic and clinical psychologist, this part can serve to introduce lawyers to theories of mental illness, the diagnostic system of the *Diagnostic and Statistical Manual of Mental Disorders*, third edition (*DSM III*), diagnostic procedures, treatment modalities, the education and practice of the two fields, and guidance for attorneys on researching the literature of the behavioral sciences, including *Index Medicus*, MEDLINE, and *Psychological Abstracts*, Psych INFO.

Although clearly written, concise, and well formulated, the introduction to psychiatry and psychology is flawed by several serious errors. In explaining the *DSM III* hierarchy of disorders, the author asserts, "since psychoses are higher in the decision tree than antisocial personality, any psychotic features such as delusions or hallucinations preclude a diagnosis of antisocial personality. One individual cannot have both in this system" (p. 24). This is not true. Patients not uncommonly receive diagnoses of both *AXIS I* (that is, schizophrenic disorder) and *AXIS II* (that is, antisocial personality disorder), and the *DSM III* system does not preclude this, even if the *AXIS I* disorder has psychotic features [1].

Bad medical advice is given regarding antipsychotic medicine. According to the author, treatment of extrapyramidal symptoms should be accomplished "first by reducing the dose of medication and then, if that fails to alleviate the symptoms, prescribing an anticholinergic drug" (p. 74). Wrong. Although this an appropriate approach for akathisia, for other extrapyramidal symptoms it would be a poor intervention. If the symptom is a painful dystonia, for example, the first response should be to provide a medicine, such as an anticholinergic agent, to lyse the muscle spasm and bring prompt relief [2]. Depending on the risk/benefit assessment, it may be desirable to maintain the dose of the antipsychotic medicine while prescribing the anticholinergic drug to prevent recurrent dystonia.

The author lists hypothermia (lowered body temperature) among several characteristics of the neuroleptic malignant syndrome. False. The more characteristic sign is hyperthermia [3,4], and a physician who awaits lowered body temperature before arriving at the diagnosis could make a fatal mistake. Such misinformation does a disservice to lawyers who seek accurate information about serious medical complications.

In discussing the limitations of electroconvulsive therapy (ECT), the author mentions

that patients with cardiac problems are at some risk of cardiac complications, but he fails to say anything about the risks of ECT for a patient with a brain tumor and elevated cerebrospinal pressure [5].

According to the author, eligibility for examination by the American Board of Forensic Psychiatry "requires a licensure in the jurisdiction in which the applicant resides, five years of residency training, and *substantial experience* in forensic psychiatry." Incorrect. Five years of residency training are not required. Rather, the applicant must have a minimum of five years of *postresidence* experience with substantial involvement in forensic psychiatry. Other prerequisites not mentioned by the author include certification in psychiatry by the American Board of Psychiatry and Neurology or by the Canadian equivalent [6]. These inaccuracies are repeated by the primary author in a later chapter (p. 197).

In discussing professional organizations for psychiatric and psychological experts, the author all but overlooks the American Academy of Forensic Sciences (AAFS). It is mentioned as a cofounder of the American Board of Forensic Psychiatry but is not discussed as an organization to which experts may belong. Neither is the *Journal of Forensic Sciences* mentioned. Fortunately, the primary author includes AAFS in a small list of professional organizations later in the book (p. 201).

In Part Two, it is curious that a book copyrighted in 1986 did not have more updated information on the insanity law in Texas, the author's state. Texas was listed among the states with an American Law Institute (ALI) insanity test that includes a volitional prong. In the 1988 Cumulative Supplement, it is noted that New York and Texas adopted the M'Naughten test and *Vernon Supp 1987* is cited. Actually the more conservative cognitive test of insanity was enacted by the Texas Legislature in 1983 [7] and took effect soon after.

The book should serve as a valuable, easy-to-use reference for preliminary research when an issue concerning psychiatric or psychological evidence presents itself. For example, the "battered wife syndrome" as a type of legal defense is discussed briefly under Insanity and Related Defenses in the chapter on Criminal Proceedings: Trial. Turning then to Chapter 12, Section 12.01 of the 1988 Cumulative Supplement, one finds a useful list of legal cases and articles dealing with the topic.

A *leitmotiv* throughout the book, that psychologists ought to be afforded higher regard as expert witnesses, a point with a balanced perspective, takes undue offense at the statutory preference for the testimony of psychiatrists and physicians over that of psychologists for purposes of civil commitment. "This preference cannot be justified by the relative expertise of two professions or the issues raised in these proceedings. It appears to be an anachronism that does not reflect contemporary theory about mental disorders or the education and training of these professions" (p. 371). Here, it does not seem to occur to the author that statutes prefer psychiatrists or physicians because they are more familiar with hospital procedures and treatment and, in many cases, will be responsible for the patient's total hospital treatment upon an affirmative finding at the commitment hearing.

In summary, *Psychiatric and Psychological Evidence* is a well-balanced, authoritative resource for both lawyers and mental health professionals. It does not promise too much or devalue, but explains how psychiatric and psychological evidence can be most useful. Granted, there are some inaccuracies, even a few serious errors. Hopefully, these will be remedied in the next Cumulative Supplement.

References

- [1] *Diagnostic and Statistical Manual of Mental Disorders*, 3rd ed., American Psychiatric Association, Washington, DC, 1980, pp. 8-9, 23-24, and 181.

- [2] Davis, J., "Antipsychotic Drugs," *Comprehensive Textbook of Psychiatry*, 4th ed., H. I. Kaplan and B. J. Sadock, Eds., Williams and Wilkins, Baltimore, 1985, pp. 1481-1513 and 1507-1509.
- [3] Simpson, G. M. and May, P. R. A., "Schizophrenia: Somatic Treatment," *Comprehensive Textbook of Psychiatry*, 4th ed., H. I. Kaplan and B. J. Sadock, Eds., Williams and Wilkins, Baltimore, 1985, pp. 713-724.
- [4] Carnoff, S. M., "The Neuroleptic Malignant Syndrome," *Journal of Clinical Psychiatry*, Vol. 41, No. 3, 1980, pp. 79-82.
- [5] Weiner, R. D., "Convulsive Therapies," *Comprehensive Textbook of Psychiatry*, 4th ed., H. I. Kaplan and B. J. Sadock, Eds., Williams and Wilkins, Baltimore, 1985, pp. 1558-1563.
- [6] *American Board of Forensic Psychiatry, Inc.* (brochure), May 1984.
- [7] Texas Senate Bill No. 7, Austin, TX, 1983.