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John W. Brown

Wake Forest University School of Law

Benjamin K. Hoover

The Pennsylvania State University

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A Psycholegal Deskbook for Bench and Bar:

Book Review of *Forensic Assessments in Criminal and Civil Law*

John W. Brown & Benjamin K. Hoover

RONALD ROESCH AND PATRICIA A. ZAPF, EDs., *FORENSIC ASSESSMENTS IN CRIMINAL AND CIVIL LAW: A HANDBOOK FOR LAWYERS*, Oxford University Press, 2012, 312 pp. \$100.00.

The role of the modern trial judge maintains basically a managerial character,¹ but the tools at the judge's disposal are continually evolving. To perform effectively, the judge must draw upon an array of legal and technical resources. To this end, *Forensic Assessments in Criminal and Civil Law* provides valuable insight regarding forensic mental-health assessments from a technical, scientific perspective. Numerous contributors submit overviews and analyses of the various ways in which forensic mental-health assessments are employed by the court system. This review examines *Forensic Assessments in Criminal and Civil Law* as a resource for the bench.

Overall, the book is well edited, with each chapter following the structure of (1) Legal Context; (2) Forensic Mental Health Concepts; (3) Empirical Foundations and Limits; (4) The Evaluation; and (5) Report Writing and Testimony, making the work congruent and easily referenced, despite the overall density of the volume. The work is best utilized as a reference material, not to be digested in one sitting.

The book begins by setting forth the foundations of forensic mental-health assessments, helpfully defining them “as a

domain of assessments of individuals intended to assist legal decision makers in decisions about the application of laws requiring consideration of individuals' mental conditions, abilities, and behaviors.” The “best practices” discussion is valuable and instructive regarding the role of courts in determining who is a qualified forensic mental-health expert and what constitutes admissible expert testimony. Although the focus of this chapter lies in summarizing standards of psychiatric and psychological practice for attorneys and judges, it provides a broad-ranging introduction to the topic and generally aids in refreshing the reader's familiarity with psychological concepts pertaining to the law before the volume addresses the specifics of forensic mental-health assessments.

“Part I: Criminal” contains eight chapters covering the various applications of forensic mental-health assessments in all aspects of criminal cases, from jury selection to capital sentencing. Of particular note and interest to the bench are the chapters in this section regarding competency evaluations, sex-offender evaluations, and capital sentencing—areas in which science and the law are co-evolving.² This part additionally provides a unique perspective regarding familiar criteria applicable in criminal matters, for instance, the requirement that a waiver of *Miranda* be knowing and intelligent³ and the cognitive and volitional aspects of insanity defenses.⁴

Footnotes

1. See generally, e.g., Elizabeth G. Thornburg, *The Managerial Judge Goes to Trial*, 44 U. RICH. L. REV. 1261 (2010).
2. See, e.g., *Indiana v. Edwards*, 554 U.S. 164, 176–77 (2008) (“[I]nsofar as a defendant's lack of capacity threatens an improper conviction or sentence, self-representation in that exceptional context undercuts the most basic of the Constitution's criminal law objectives, providing a fair trial.”); *Panetti v. Quarterman*, 551 U.S. 930, 960 (2007) (“Gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose. It is therefore error to derive from *Ford*, and the substantive standard for incompetency its opinions broadly identify, a strict test for competency that treats delusional beliefs as irrelevant once the prisoner is aware the State has identified the link between his crime and the punishment to be inflicted.”); *Kansas v. Hendricks*, 521 U.S. 346, 352, 360 (1997) (holding that state statute allowing indefinite commitment of sexually violent predators upon a finding of “mental abnormality”—a “congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses to the degree that such person is a menace to the health and safety of others”—did not violate the due-process clause).
3. *Moran v. Burbine*, 475 U.S. 412, 421 (1986); Richard Rogers et al., *Knowing and Intelligent: A Study of Miranda Warnings in Mentally Disordered Defendants*, 31 LAW & HUM. BEHAV. 401, 416 (2007) (“Defense attorneys may assume that criminal defendants have sufficient understanding of the *Miranda* rights and waivers based on their educational level and extensive contacts with the criminal justice system (Rogers, 2006). The current findings question these assumptions, at least in the case of mentally disordered defendants. On average, defendants with the poorest understanding had completed the 10th grade and had 10 prior arrests.”).
4. *Clark v. Arizona*, 548 U.S. 735, 752 (2006) (“[I]t is clear that no particular formulation has evolved into a baseline for due process, and that the insanity rule, like the conceptualization of criminal offenses, is substantially open to state choice. Indeed, the legitimacy of such choice is the more obvious when one considers the interplay of legal concepts of mental illness or deficiency required for an insanity defense, with the medical concepts of mental abnormality that influence the expert opinion testimony by psychologists and psychiatrists commonly introduced to support or contest insanity claims. For medical definitions devised to justify treatment, like legal ones devised to excuse from conventional criminal responsibility, are subject to flux and disagreement.”).

“Part II: Civil” comprises five chapters that cover the more limited application of forensic mental-health assessments in relatively common civil matters. The chapters addressing guardianship evaluations and civil commitments may be of particular interest to practitioners and judges alike. Petitions for the appointment of a guardian over a person suffering under a disability and a conservator over that person’s estate are common on the dockets of many state courts.⁵ There is significant variation in such proceedings across jurisdictions,⁶ as the authors of the devoted chapter recognize, but there are best practices nevertheless applicable under the sundry statutory constructs. The chapter lists several areas in which a guardianship/conservatorship respondent may be impaired (i.e., testamentary capacity, voting, marriage, automobile driving, financial transactions, independent living, and medical care) and sets forth diagnostic measures applicable to these areas.

“Part III: Juvenile and Family” concludes the volume with five chapters addressing forensic mental-health assessments in civil and criminal juvenile and family proceedings. The chapter addressing child-custody evaluations gives an overview of these procedures, insight regarding the relevant mental-health concepts, and analysis of some ethical challenges faced by mental-health professionals conducting these assessments. The conceptualization of reports on forensic child-custody evaluations delineates both the intended and unintended functions that these reports serve for the parties and the court. Again, although practices vary across jurisdictions, the materials in this section are worthwhile in providing an overview of best practices and a broad understanding of these areas from beyond the simple legal perspective.

The authors of *Forensic Assessments in Criminal and Civil Law* admirably recite the limitations of forensic mental-health assessments with respect to various legal concepts, while nevertheless emphasizing the utility of such assessments to various facets of the legal system. Were the reviewers to note potential improvements for a subsequent edition, the inclusion of proper legal citations to the cases referenced would top the list, as the volume is written for legal professionals. This would help to temper the strong clinical bent of the book. In a similar vein, caselaw citations would be of more use to attorneys as a primary reference, as opposed to the numerous academic

studies supporting many of the propositions in the text. Most attorneys and judges would not pull and critique studies but would quickly analyze cases cited for application. References to the DSM-5 may also prove beneficial. Finally, a glossary of standard psychological tests and terms (forensic instruments), as well as the uses and acceptance thereof, would be helpful for many in the legal profession.

In sum, *Forensic Assessments in Criminal and Civil Law* is a worthwhile volume, addressing psycholegal concepts as related to forensic mental-health assessments. The ambitious scope of the book does not detract from the detailed information regarding the numerous areas of law to which forensic mental-health assessments are applied, and its value lies as a solid background and reference volume.



John W. Brown is a judge on the Circuit Court of the City of Chesapeake, First Judicial Circuit of Virginia. He graduated cum laude from Methodist University, received his J.D. from the Wake Forest University School of Law, and earned an LL.M. in taxation from the William & Mary School of Law. Beginning in 1974, Judge Brown engaged in the practice of law in Chesapeake, serving as a Commonwealth’s Attorney and private practitioner, until he assumed the bench in 2008. He is a member of the Executive Committee of the American Bar Association’s National Conference of State Trial Judges.



Benjamin K. Hoover is a staff attorney for the Circuit Court of the City of Chesapeake, First Judicial Circuit of Virginia. He graduated from the Pennsylvania State University with distinction in 2007. He attended the University of Richmond School of Law, where he served as Lead Articles Editor on the Executive Board of the Law Review and graduated magna cum laude as a member of the Order of the Coif. Following graduation, he clerked for the Circuit Court of the City of Chesapeake and the Supreme Court of Virginia.

5. See Brenda K. Uekert & Richard Van Duizend, *Adult Guardianships: A “Best Guess” National Estimate and the Momentum for*

Reform, in *FUTURE TRENDS IN STATE COURTS* 107–09 (2011).
6. See *id.*