

Law and Psychiatry

A Few New Books

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This month's column reviews five books, some particularly important for those who do forensic work. Four are written primarily by psychologists, and one specifically addresses psychology practice, but their contents are relevant to all the mental health professions.

Ethics in Psychotherapy and Counseling: A Practical Guide (3rd Edition). Kenneth S. Pope and Melba J.T. Vasquez. San Francisco: Jossey-Bass, John Wiley & Sons; 2007. 459 pages, \$50 (paperback) (ISBN 978-0-7879-9400-6) .

This book has some good information, but it is not primarily a guide to ethics in psychotherapy and counseling as the title implies. Most of the text is an admittedly incomplete guide to psychotherapy and counseling practice, not ethics per se. There are appendices which reprint the American Psychological Association *Ethical Principles of Psychologists and Code of Conduct* and the Canadian Psychological Association *Code of Ethics*, but the main body of the book is largely (and confusingly) devoted to a mix of good clinical practices, legal and malpractice issues, and suggestions for dealing with liability (six of the seven discussion cases in Chapter One refer to being sued). If that is its purpose, the text is spotty and incomplete.

The authors do a very good job in some areas (such as practice recommendations for beginning and ending therapy, Chapter 10), but their best-practice recommendations, which belong in a good clinical psychology textbook, are necessarily incomplete. There are many examples that mix ethics, practice standards, legal duties (e.g., to prevent someone from driving, p.11), practice suggestions, and civil liability. Chapter 6, "Preparing a Professional Will," is a useful guide but an odd chapter for an ethics book. Chapter 5, on the therapist's personal responsibilities, addresses caring for oneself to prevent burnout and augment professional strengths.

Comments on best practices, professionalism, and staying out of trouble aren't bad things, but those subjects aren't the main point of ethics, which should be appreciated and followed in their own right, regardless

of professional convenience or fear of lawsuit. In that sense, the authors sometimes appear to misunderstand the interface between ethics and civil law (e.g., in a case example on p. 9 in which a clinic director sues a former student for stealing patients).

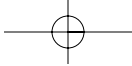
Chapter 11, on informed consent and refusal, contains some excellent information but it confuses the topics of patient rights, case law (e.g., p. 137), ethics, and routine professional procedures in such a way that "ethics" gets lost in the shuffle. Those topics sometimes overlap, to be sure, but case law is not ethics (nor does it create ethical principles); "rights" are not necessarily a basis for ethics (cf. p. 135); the process of obtaining consent when necessary or advisable has an ethics dimension, but the authors attend more to procedures than to ethical issues.

Chapter 17, on response to suicide risk, is another broad example of the authors' attempt to recommend clinical procedures, in the style of a practice guide, without much attention to ethics per se. Many of the recommendations are good ones, but much of the chapter consists simply of brief, philosophical suggestions, some quoted from colleagues who seem to have had a favorite suicide assessment topic or story to impart.

Several of the chapters are adapted from previously published books, one of which (chapter 2) is re-adapted for the second time since 2003. Many chapters have "Scenarios for Discussion" that are thought provoking.

The authors are experienced doctoral-level psychotherapists with impressive academic and leadership credentials. Dr. Pope has chaired the American Psychological Association Ethics Committee and co-founded the post-therapy support program at UCLA, dedicated to professionals who work with patients who have been sexually exploited by therapists. Dr. Vasquez

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has been a member of the American Psychological Association Ethics Committee as well and has participated in the 1992 and 2002 revisions of the APA *Ethical Principles of Psychologists and Code of Conduct*.

Forensic Assessment of Violence Risk: A Guide for Risk Assessment and Risk Management. Mary Alice Conroy and Daniel C. Murrie. Hoboken, NJ: John Wiley & Sons; 2007. 370 pages, \$75.00 (ISBN 978-0-470-04933-4).

This is a very nice book, primarily aimed at psychology trainees and other professionals who are preparing for forensic careers. The principles apply as well to psychiatrists and non-forensic clinicians who are asked to assess violence risk, and to those who have experience with mental health and the law but who may have a limited understanding of risk assessment.

One of the things I like about this book is its primary focus on understanding, managing, and communicating about violence *risk* rather than prediction of individual behavior. We should eliminate the notion that professionals must try to “predict” violence, and embrace the much more logical (and feasible) task of dealing with risk. The authors are correct that once a reader understands that risk, not prediction, is the issue, our task becomes much more feasible.

Since individual behavior, particularly complex behavior over time, does not lend itself to prediction, risk assessment is largely concerned with accurately viewing the evaluatee as part of a group of similar people about whom one can make statistical statements. In their overview, the authors make this clear, for example in the subsection “What Do We Know About Individuals Like This One....” They properly note that everyone, and every situation, has some risk; the point is to accurately define the risk group and help the client (the person or agency asking for the evaluation, not usually the evaluatee) determine whether or not the likely risk level is tolerable (e.g., for public safety) under the circumstances. They point out that risk is rarely limited to static variables. It often requires reassessment, and a number of factors—including, but not limited to, clinical and environmental interventions—routinely alter it.

The authors make an early point that formal risk assessment protocols and testing measures are important to a good evaluation. Informal interviews, evaluatee statements, anecdotal experience, and clinical intuition are not enough. Objectivity and knowledge of base rates inherent in both clinical experience and acceptable protocol standardization are critical to the validity and reliability of assessment results.

Conroy and Murrie spend many pages discussing how to communicate the results of the assessment, which is a very good thing. The evaluator’s audience may at various times be an attorney, court, jury, employer, clinician, hospital or hospital staff, prison/jail or correctional staff, or, sometimes, the evaluatee himself or herself. The ability to communicate one’s findings in a concise, useful, understandable, and unambiguous way is critical, especially when the report recipient or listener has a stereotypic view that should be supplanted by objectivity (as in the case of many juries or employers), or when the evaluator must deal with a preconceived “agenda” that is contradicted by the findings (as sometimes happens with lawyers who are advocating for their clients, a direct advocacy that the evaluator should not have).

I am not a fan of overreliance on so-called “protective factors” when major risk indices are present. The authors cite a fairly recent article by Richard Rogers¹ and other papers in a brief discussion of the potential mitigating effect (largely in youth) of factors such as female gender, intelligence, and social interaction. I remain unconvinced and recommend paying far more attention, within the relevant context, to ominous data such as a particularly violent history, mood or behavioral instability, substantial substance abuse, or high scores on the Psychopathy Checklist-Revised (PCL-R).

I am a little concerned that in Chapter 7, the authors refer to one risk-communication option as “prediction-oriented” and say that it includes a “formal prediction.” Here, and in a few other places, it should be made clear that the word “predict” should be struck from virtually all risk estimates (particularly when it refers to individual behavior) and replaced with references to groups of similar people, given particular circumstances over specified time periods. One can convey level of risk effectively without offering inappropriate predictions and, in the process, help the audience understand that, while actuarial and other evidence-based modes of estimation are useful, we have no “crystal ball” (psychometric or otherwise) for translating actuarial concepts into individual prediction. The authors summarize (pp. 100–102) Monahan and Steadman’s “weather report” analogy² for assessing and dealing with risk. It is important that practitioners not use that analogy simplistically.

Some of the chapters focus on particular types of violence, evaluatees, and assessment circumstances. There are special chapters on sex offenders, juveniles, and death penalty defendants. A large appendix provides examples of real reports and report formats for communicating findings. Many of the principles presented are

solid ones, although I would find fault with some of the examples. Another appendix provides a nicely annotated list of assessment instruments. The book's reference list is impressive.

This is not a comprehensive treatment of forensic psychological evaluations (see the Melton et al. text, below), but it is very helpful for a specific and important part of forensic work.

Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers (Third Edition). Gary B. Melton, John Petrila, Norman G. Poythress, and Christopher Slobogin, with Phillip M. Lyons, Jr., and Randy K. Otto. New York: Guilford; 2007. 930 pages, \$95.00 (ISBN 978-1-57230-966-1).

There is very little to criticize about this new edition of an excellent text, the first update in a decade. I've had it on my bookshelf since the first (1987) edition, and know Gary Melton and John Petrila to be outstanding in their fields (not to slight Professors Poythress or Slobogin; I simply haven't met them).

Part I of this very substantial volume contains introductory chapters on basic law and the mental health professions, an overview of the U.S. legal system, basic assessment, legal and ethical issues related to evaluation, and managing forensic services. Part II is devoted to mental aspects of criminal matters, including trial and other competencies, criminal responsibility, exculpation, mitigation, and sentencing. Part III, "Noncriminal Adjudication" includes civil commitment, civil competencies, mental injury (workers compensation and torts), federal entitlements, and civil rights. Part IV focuses on children and families, including delinquency, abuse and neglect, child custody, and education. Part V, "Communicating with the Courts," contains a relatively brief (and somewhat spotty) chapter on consultation, reports, and expert testimony, followed by a long chapter with discussions of 17 sample reports on 12 different forensic topics.

There is a limited (but sufficient for most mental health professionals) glossary of legal terms and an enormous section of notes and references. A second glossary, of clinically related terms, seems spotty and erratic for mental health professionals but may be just right for the lawyers for whom the text is secondarily designed. A separate case index would have been nice in such a detailed text.

If you perform forensic evaluations for a living, you need this book (and \$95.00 is a steal in today's academic market). If they are only an occasional part of your

clinical practice, you may not want to buy a copy, but you should know where to go to consult one.

Clinical Assessment of Malingering and Deception (Third Edition). Edited by Richard Rogers. New York: Guilford; 2008 (in press). 498 pages, \$65.00 (ISBN 978-1-59385-699-1).

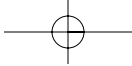
Richard Rogers is pretty young to be a dean of the topic of malingering mental and emotional symptoms, but that's just the way it is. Forensic professionals know his pioneering and now well-accepted malingering assessment instruments, including notably the Structured Interview of Reported Symptoms (SIRS). The third edition of this excellent and standard reference is revised, expanded, and continues to occupy a crucial space on many forensic psychiatrists' and psychologists' bookshelves. Although this is an edited book, the chapters are generally tight, well-referenced, and written by experienced experts in their particular fields.

The variety of symptom presentations, assessment methods, and diagnostic issues covered is far broader than that in the first edition. Resnick and Knoll write on malingered psychosis; Bender discusses feigned traumatic brain injury; Stein and Rogers address misrepresentations of substance abuse; Resnick and colleagues tackle the difficult topic of subjective symptoms of post-traumatic stress disorder. The list goes on, including chapters on factitious disorders and feigned general medical symptoms.

Feigned amnesia and memory loss, one of the best studied areas of malingering, is discussed in the section on psychometric methods (statistical/actuarial approaches being an elegant part of the memory-deception field). There are two chapters on assessing deception in responses on multi-scale inventories such as the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), as well as chapters on projective testing and neuropsychological batteries.

Memory-related deception is further addressed in the section on specialized methods, which includes chapters on false and "recovered" memories and polygraphy. Rogers discusses structured interviews and Smith addresses brief screening for feigned psychopathology. The section also has a new chapter on deception in sex offender assessment.

Children and adolescents are briefly addressed in a chapter that has interesting material but may have been included more for completeness than for comprehensive study (note that I'm not a child psychiatrist). I got the same impression about the chapter on law



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enforcement, a topic that deserves more attention. Dr. Rogers' own introductory chapters on response styles and detection strategies, and his summary chapters on the state of the detection field and research efforts, knit the book together.

This is one of those "must have" books for forensic mental health professionals. Much of its information is also useful in clinical practice, especially in institutions that serve forensic or correctional populations. Although very technical in places, the book is generally easy to read.

Practical Approaches to Forensic Mental Health Testimony. Thomas G. Gutheil and Frank M. Dattilio. Baltimore: Lippincott Williams & Wilkins; 2007. 176 pages, \$59.95 (ISBN 978-0-7817-7213-6).

Tom Gutheil's practical, easy-to-read style is well known to most forensic psychiatrists and psychologists, as well as to the many clinicians who have read his pithy guide for "non-experts" before heading into court for one reason or another. Frank Dattilio is less familiar to psychiatrists, but has published a great deal on individual and family psychotherapy and has impressive forensic experience. I'm not aware of any other books the two have written together, and this publication moves beyond Gutheil's usual focus on psychiatrists.

This volume, like Gutheil's earlier brief guide-style books, is practical, readable, and very well organized. It must be said that some of the text repeats concepts from Gutheil's 1998 publications *The Psychiatrist as Expert Witness*³ and *The Psychiatrist in Court: A Survival*

Guide,⁴ but the current book aims for a wider readership. It covers, in a concrete way, what one should know in order to testify accurately and ethically, and to convey one's facts and opinions effectively to judges and juries.

Section One addresses core issues of general presentation of testimony, expert witness bias, cross examination, and "other perils." Section Two has chapters on limitations on testimony, personality obstacles, what to do when one must withdraw from a case late in the process, and "paraforensic" issues. Section Three discusses the critical area of attorney-expert relationships, including both open and subtle attempts by the lawyer to influence the expert's testimony. The final section, which has some of the most interesting comments, is on "special problems."

Books are getting pretty expensive, and some will find \$60 a lot to pay for such a slim volume. But the value of advice is in its quality and relevance to one's needs. When you need this book, you need it, and what's inside goes a long way.

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