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Book Review

E. Donald Shapiro

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A PRACTICAL GUIDE FOR LAWYERS AND MENTAL
HEALTH PROFESSIONALS

SMITH & MEYER: LAW, BEHAVIOR AND MENTAL HEALTH:
POLICY AND PRACTICE*

E. DONALD SHAPIRO**

Dean Steven R. Smith and Professor Robert G. Meyer, a distinguished legal educator and a clinical psychologist, have jointly written a very practical, comprehensive book on law and psychology. The work should appeal not only to serious scholars, but equally to practitioners in both of these significant fields. It will also serve as a practical guide for lawyers and mental health professionals in approaching this new and intriguing but highly complex area of law.

While most books in this field circumvent the confrontational issues of ethics as well as malpractice, Dean Smith and Professor Meyer confront these problems directly. This book boldly deals with the ethical considerations as well as the policy issues that relate to both professions. Despite the controversy that is inherent in many of these subjects, the authors propose to the reader sound, practical, unbiased advice on how to resolve and deal with these areas of potential conflict.

The authors successfully blend into one work a look at the current social-ethical issues of mental health practice and criminal law. The book is well-documented with endnotes after each chapter in a citation form which will be familiar to both the legal professional and the mental health practitioner who has some familiarity with legal materials. There is also an extremely helpful introduction entitled, *A Note on Notes*, which further decodes endnotes for the non-legal reader. The book's bibliography is rich in reference material for any reader desiring to do more in-depth research on a particular topic.

In the first part of the book, the authors concentrate on *The Law and Mental Health Practice*. One highlight worth noting in this section is the thorough discussion of the ethical and legal duties facing the mental health professional. The authors concentrate on ethical issues, primarily the malpractice realities of strict confidentiality and privacy, inherent in both the legal and the mental health profession. Although the rate of malpractice claims is low for mental health professionals, those that arise range from alleged sexual involvement with patients to injuries resulting from improper intrusive treatment or experimental procedures. Within the context of obtaining informed consent from the patient with ques-

* New York University Press, 1987.

** The Joseph Solomon Distinguished Professor of Law, New York Law School, and Supernumerary Fellow of St. Cross College, Oxford University. I am grateful to Barbara Rosenberg who assisted in the preparation of this review.

tionable capacity for making decisions on extremely intrusive treatment, the mental health professional is certainly caught in a myriad of ethical and legal dilemmas regarding liability for controversial treatments such as electroconvulsive therapy (E.C.T.) and psychotropic drugs. Other issues dealt with in this part include the ethical and legal implications of experimentation on live subjects, such as prisoners who may not be able to freely give full informed consent, and the use of animals for experimental purposes.

The duty imposed upon psychotherapists in the landmark *Tarasoff*¹ decision is considered at length, as is the legislative action prompted by this line of cases. In another controversial area, the authors confront head on the issues of child abuse, child neglect and the controversy surrounding the intrusion on family privacy required by current Child Abuse Reporting Laws. This section concludes with an informative discussion of the nuts and bolts of mental health care regulations imposed by state licensing laws and insurance limits on reimbursement for mental health care.

In part two the authors delve into *Human Behavior and the Courtroom*. The authors analyze the role of the mental health expert in both case preparation and jury selection. There is an indepth colloquy of the professional's role in the detection of deception and the ascertainment of truth at trial. The authors objectively analyze the controversial issues surrounding the role of the mental health practitioner in the legal trial process. Many readers will also find useful the description of the trial process. The authors begin with the "voir dire" and the criteria for jury selection and then move through the admissibility of evidence and conclude with jury instructions. Against the themes of truthfinding and deception, the reader is taken through the intricacies of psychological testing and the critical assumptions that the mental health professional makes when ferreting out lies and truth through the use of body language cues, drugs and mechanical devices.

There is also a good step-by-step summary of the legal system's use of eyewitness testimony. The characteristics of the eyewitness and the use of the eyewitness by both the prosecutor and the defense attorney are clarified. The identification process is detailed and the constitutional guidelines for protecting due process are discussed. The authors touch on the admissibility and the use of eyewitness testimony as well as evidence garnered through the eyewitness process. The evidence includes photo identification, voice (spectrographic) identification, and the lineup. This part concludes with a most useful and practical chapter of advice for the mental health professional who becomes involved in the legal system as an expert witness.

¹ *Tarasoff v. Regents of Univ. of Cal.*, 17 Cal.3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976) (The *Tarasoff* court held that a psychotherapist has an obligation to use reasonable care to protect an intended victim when a client presents a serious danger of violence to that person.)

The authors decisively recommend that the mental health professional take only one role in a legal case, that of expert witness, consultant, therapist, or advocate, even if the professional is pressured to take on more than one role. An exhaustive check list is presented for handling a case including key points on preparation, courtroom presentation and the survival of a cross-examination experience. The chapter neatly summarizes the considerations the mental health professional should take into account as an expert witness in order to avoid a conflict of roles.

Part three of the book deals with *Behavioral Science and Social-Legal Policy*. This part concentrates on the functions of punishment and the treatment of undesirable behavior. The authors contrast the current concepts of punishment based on the "free will" theory with treatment under a "behavior model" theory. It is obvious from their comments that in today's society these classifications are too black and white. The authors express a very real concern that today's society has returned to an earlier view that the purpose and the importance of punishment should be solely as a deterrent to crime. The authors opine that society's outlook should again be as focused on the rehabilitation of the convicted criminals as is now the fashion to focus on victim restitution.

Woven throughout this section is a concern over social-legal policies which condone punishment of the mentally ill, the incompetent and the juvenile offender — those who are the exception to the norm of an adult responsible for the consequences of his or her actions. The authors are especially thought provoking in questioning our current "punishment oriented" society in light of the burgeoning prison population with the attendant staggering social and economic costs.

For those specializing in domestic relations and family law, there is an excellent description of the juvenile justice system as well as recommendations by the authors on how to deal with juvenile offenders. In a critical and candid examination of pervasive child abuse and neglect, the authors force the reader to face this pressing social problem — one which both society and the law are having great difficulty in coming to grips. In the authors' words, it is true, but unfortunate, that we are at the point "where current definitions . . . are so broad and vague as to be nearly useless."

The last part of this section reviews custody rights and debates the issue of what is in the true best interest of the child caught in a custody rights battle. It considers mental illness and the law and the legal system's attempts to recognize the behavioral differences among the psychopath, sociopath and other antisocial personalities. For the legal professional, the six point definitional list of personality traits will be useful in clarifying various popular definitions of a psychopathic personality. A forthright discussion of current legal responses to sexual variations is included for those practitioners not yet familiar with the legal reasoning behind sexual-psychopathic laws.

The authors deal with aspects of incompetency that most mental health experts can expect to encounter during their practice. The mental health practitioner will be happy to find a concise description of the legal

procedures followed in order to declare a person mentally competent to stand trial. Of equal interest are the procedures used to declare a person incompetent, thereby necessitating the appointment of a guardian. Perhaps of greatest concern to the mental health professional is rendering an expert opinion on the involuntary civil commitment of a person deemed mentally ill and too dangerous to be living freely in society. The authors grappled directly and in a forthright manner with this hard-to-make, but necessary, decision.

The book concludes with part four and summarizes ethical concerns that both the legal and behavioral specialist will be faced with when making decisions that impact the determination of whether an individual is competent or incompetent to make his or her own fundamental life decisions. The authors correctly view this as the next great civil rights issue in mental health which will confront practitioners in the 90's.

A comment from one of my law school students using *Law, Behavior and Mental Health* as a resource while researching a particular mental health topic summarizes the overall excellence of this book: "I found this book so fascinating that I just could not stop reading after reviewing the chapter on point for my thesis." The authors have obviously put together an outstanding work which synthesizes an enormous amount of legal and mental health research into a very readable and well-integrated volume. This book should be read by all in both the legal and mental health fields — from the novice to the advanced professional.