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Book Review [Psychiatry in Everyday Practice of Law]

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BOOK REVIEWS

PSYCHIATRY IN EVERYDAY PRACTICE OF LAW. By Martin Blinder, M.D. Rochester: Lawyers Cooperative Publishing Co.: 1973.

Dr. Martin Blinder takes a pragmatic and enlightened approach to the relationship between the psychiatrist and the lawyer in *Psychiatry in Everyday Practice of Law*. As retired Supreme Court Justice Tom C. Clark reminds the legal profession in his introduction to the book, an effective attorney is one who is adept not only in the courtroom but in interviewing clients and witnesses and in dealing with other lawyers.

Written in a lucid and often candid manner, Dr. Blinder's book is geared toward the lawyer's daily practice. From it an attorney can obtain quick reference to the complex semantics of psychiatry as they pertain to a particular client or problem. It is not an encyclopedia of psychiatric disorders, nor is it a glossary of terms. It is, in essence, a digest of the areas in which law and psychiatry meet and overlap. The book is unusually well organized, leading logically from topic to topic. The footnotes, mercifully, are short and easy to read without interrupting the text. At the end of each chapter, instead of the usual meaningless bibliography, there is a box containing selected references to which the lawyer may turn for further information.

Of particular interest to the practicing lawyer is Chapter Twelve which diagrams and deciphers psychiatric evaluation reports concerning issues such as competency to stand trial, sanity, homicide and disassociative reactions, sociopathic character disorders, diminished capacity and other mental conditions. It seeks to explain the approach and mental processes of psychiatrists who examine criminal defendants and to answer why, as inevitably happens, the prosecution's psychiatrists report one way and the defendant's another. The chapter also deals with psychiatric reports evaluating post-traumatic conditions and testamentary capacity. These sample reports, taken from Dr. Blinder's own files, can help the attorney not generally familiar with the language and concepts of psychiatry to properly evaluate similar reports in the future. One example utilized by the author is the all-too-familiar accident victim involved in a minor collision, whose medical recovery normally should occur within four to eight months, but

who continues to complain of pain and inability to work. When examined by medical experts on either side, the injured person proffers symptoms that are wholly subjective and not substantiated by x-rays, tests or other objective diagnostic approaches. Is this a true traumatic neurosis or is it one that will disappear after the litigation? Dr. Blinder describes ways to determine if a client is indeed a malingerer.

Dr. Blinder also discusses the well known case of the injured workman who claims a total physical disability following a work-related injury which is out of all proportion to the trauma. Dr. Blinder handles these topics with clarity and offers some incisive suggestions for doctors and lawyers to overcome the subconscious motivating forces of these unhappy people.

I have often found, in discussing possible settlement of cases in which post-traumatic overlays are alleged, that the plaintiff's attorney sincerely believes in the truth of his client's contentions but has difficulty supporting them technically. Furthermore, defense counsel tends to belittle these claims as tactics designed to encourage a higher settlement. Dr. Blinder suggests that these positions stem from an inappropriate reliance on experts in medical specialties which seldom deal with the psyche per se; but even reliance on psychiatrists will not insure success. For example, in trials where the psychiatric overlay to a modest physical injury is alleged to be substantially disabling, a psychiatrist's testimony is oftentimes poorly received by the jury. In addition, psychiatrists disagree so often among themselves that their testimony is seldom given the same weight by juries as that of neurologists or orthopedic specialists. Still, it is important for the bar to be able to understand post-traumatic disorders in order to be better able to deal with juries and claims adjusters.

The first two chapters classify and define various neurological and psychological concepts, the components of neurological anatomy, the soma and the psyche. Dr. Blinder does not involve the reader in an argument between the Freudian and the transactional approaches to psychiatry. Instead, he presents a short non-controversial explanation of personality, followed by an informative but generalized history of personality development from infancy to senescence.

To the probable indignation of female attorneys, most of the examples given and the situations related tend to put women in an unequal posture. As a judge who has presided over scores of jury trials, I find that Dr. Blinder aligns himself with those trial lawyers who tend to stereotype jurors by race, religion, occupation or ethnic origin. His comments on jury reaction to testimony by different sexes are quite interesting whether one agrees

with his conclusion or not. He contends that, other things being equal, men are disposed favorably and women unfavorably to the words of an attractive woman and that an attractive man has an advantage with women jurors.

Women lawyers will undoubtedly resent Dr. Blinder's positive assertion that, no matter how competent, a female attorney labors under a handicap in trial work because her voice tone, "inevitably and appropriately incisive, strident and critical as she conducts a cross-examination or challenges opposing counsel, often falls upon the ears of the juror, male or female, as a childhood echo of his own mother's angry, critical moods." This not only paints a bold picture of the lady lawyer as a tough and aggressive creature but implies that most jurors had critical, angry mothers. As a judge, I tend to agree that women attorneys do have a generally unequal status in the profession, but for other reasons. In general, few women lawyers seek to engage in regular civil or criminal jury trial work.

A useful chapter deals with the classification of the various kinds of mental illnesses: the distinction between psychoses and neuroses; the delineation of the various disorders affecting people; and a discussion of some of the causes of mental illness, including heredity and environment. Dr. Blinder explores the effect of a family's life style upon children and how that effect manifests itself in their adult roles. There is also a discussion of the special problems of suicide and violence. Another valuable chapter gives an insider's view of how a psychiatric evaluation is made and describes the use of drugs, electro-shock, hypnosis and other medical tools. The discussion of the personalities of a variety of anti-social individuals who become involved with the law and the courts is especially interesting.

One chapter explores the conflict between legal and psychiatric thinking regarding the problems of criminal responsibility. How should society resolve the tension created when a defendant is found sane at the time of trial, but not responsible for his actions at the time of the offense? What is malice and how can it be determined from the history of the individual or the crime? What is the appropriate treatment or punishment? These and other matters of concern to criminal lawyers and judges are explored.

Dr. Blinder has included a short chapter on pornography in which it is made abundantly clear that he does not believe that there is such a thing. Pornography, he believes, is "in the mind of the beholder" and no definition of community standards or of prurient interests is possible. He suggests that materials pres-

ently deemed pornographic may in fact be therapeutic and offer a substitute for criminal sexual behavior.

In all, I found the book quite worthwhile. It will provide the attorney with better insight into each client's personality and may stimulate serious thought about his or her own personality and background. Regardless of whether or not a *psychiatrist* can be truly objective, a *lawyer* often becomes emotionally involved with his client's position. *Psychiatry in the Everyday Practice of Law* is helpful in understanding why this involvement occurs, and it might assist the lawyer in avoiding detrimental personal identification with a client's situation. This work has a place on the desks of both doctors and attorneys who do medico-legal work; it could assist both professions in truly working for the patient/client's best interests.

*Judge George H. Barnett**

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SHORT-TERM TRUSTS. By E. William Carr. Prentice-Hall: 1973.

From his perspective as a lawyer and based upon some thirty years as a bank trust officer, E. William Carr has devised a fundamental guide for using short-term living trusts. For the many lawyers who do not have a basic knowledge of the subject matter, this book offers a broad exposure to short-term trusts. Even the attorney who specializes in the fields of taxation and estate planning will find the book an excellent review, offering interesting insight into some of the peculiarities of short-term trust administration.

The book is divided into two parts. The first part deals with planning and drafting and the second delves into the administrative aspects of short-term trusts. In the course of exploring a trustee's administrative powers, Mr. Carr highlights the adverse income tax consequences when, either in a fiduciary or non-fiduciary capacity, certain powers are exercisable by the grantor of the trust or by his or her spouse. As grantors are frequently unwilling to relinquish management and control of trust assets because of reversionary expectations at the end of the trust term, the extent of a grantor's powers is a principal consideration in planning a short-term trust. The author considers the taxation of trust income to the grantor when that income is used to discharge the grantor's legal obligations, such as support for dependents. Oftentimes, those who contemplate establishing a short-term trust for the benefit of their children desire to use trust income for college expenses. Whether college education is part of support is an unresolved question in many jurisdictions.

The short-term trust can also be a useful device to support one's elderly, infirm, or indigent parents, but if state law requires the child to furnish support for a parent in such predicaments, the income tax consequences to the grantor must be considered. Unfortunately, the author did not devote enough attention to this area.

In two chapters, the author offers some interesting variations on the use of the short-term trust. One chapter deals with charitable gifts through short-term trusts, comparing the short-term trust to the charitable foundation. In particular, Mr. Carr indicates the many tax advantages of a charitable short-term trust. Unlike a private charitable foundation, the charitable short-term trust is not subject either to strict regulation or severe penalty

taxes. In the other chapter, the author elaborates on the creation of a short-term trust by the income beneficiary of an existing trust, which allows the income beneficiary to channel trust income to another individual for a period of years, affording considerable income tax savings.

In the second half of his book, Mr. Carr, drawing on his extensive experience as a trust officer, devotes special attention to short-term trust administration. Unquestionably, this treatment will be of primary interest to the trust officer or the accountant, but it should also interest the attorney who seeks to understand more clearly the responsibilities and problems of the trustee.

On the whole, the book is a useful tool for trust officers, life underwriters, accountants, and attorneys, but its "how to" approach may lead the non-lawyer to assume that this brief exposure affords sufficient knowledge to resolve complex legal questions. Because the planning, administration, and tax implications of short-term trusts are extremely complicated, the author should have made an extra effort to highlight the legal pitfalls of a do-it-yourself approach.

Mr. Carr knows the subject well and shares his knowledge and experience with us. Existing publications and references in this particular area are inadequate, and his book is a welcome addition.

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