

Michigan Law Review

Volume 79 | Issue 4

1981

The Uses of Psychiatry in the Law: A Clinical View of Forensic Psychiatry

Michigan Law Review

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Law and Psychology Commons](#)

Recommended Citation

Michigan Law Review, *The Uses of Psychiatry in the Law: A Clinical View of Forensic Psychiatry*, 79 MICH. L. REV. 759 (1981).

Available at: <https://repository.law.umich.edu/mlr/vol79/iss4/18>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

THE USES OF PSYCHIATRY IN THE LAW: A CLINICAL VIEW OF FORENSIC PSYCHIATRY. By *Walter Bromberg*. Westport, Conn.: Quorum Books. 1979. Pp. x, 442. \$25.

In *The Uses of Psychiatry in the Law*, Walter Bromberg surveys with apparent approval the current relationship between law and psychiatry, disciplines which share the "common aim of attempting to manage human misbehavior" (p. 3). The book uncritically describes relevant case law and psychological data as well as Bromberg's own forty years of clinical experience. Bromberg's perspective is colored by his confidence in the validity of psychiatric categorization of behavior. He assumes that psychiatrists are in the legal process to stay, and his discussion of the many important issues concerning use of psychiatric information in the judicial system consistently, albeit implicitly, favors a broad psychiatric role.

The book is organized around the various areas of law to which psychiatry is regularly applied, including defenses of insanity and diminished capacity, issues of mental competency, violent and sexual crimes, and child custody. Within each area, Bromberg discusses legal and psychiatric developments and how they have interacted to expand or limit the psychiatrist's role. He provides clear explanations of the concepts involved, a surprisingly thorough review of the case law, and a careful analysis of the difficulties involved in translating psychiatric concepts into legal principles.

Bromberg's exploration of the limitations of psychiatric thinking,

however, inadequately responds to the most fundamental concerns of those who caution against extensive application of psychiatry to legal problems.¹ Doubts about the validity of psychiatric findings probably explain much of the judicial reluctance to accept psychiatric evidence and categorizations. As Chief Justice Burger suggested in an article prior to his appointment to the Supreme Court: "[at] best psychiatry is now an infant among the family of sciences. . . . [Psychiatrists] may be claiming too much in relation to what they really understand about the human personality and human behavior."² Similar doubts have been expressed by other writers.³

While Bromberg recognizes these doubts in situations where psychiatrists attempt to predict dangerousness, he seems to assume that similar problems do not plague attempts to characterize past mental states, decisions regarding what environment is in "the best interest" of the child, and other difficult areas. Such an assumption seems unfounded: the impediments to successful prediction of dangerousness may also limit the accuracy of psychiatric evidence in other areas. Ennis's and Litwack's comprehensive study of psychiatric evaluations indicated that "[h]uman behavior is difficult to understand, and, at present, impossible to predict."⁴ They found that psychiatric judgments can be colored by, among other things, socioeconomic factors, personal biases, and institutional contexts (*i.e.*, the training of the psychiatrist and the context of the evaluation). The effect of these biases may be particularly important because of the ambiguity of psychiatric data.⁵ Bromberg does not explain why these barriers to accurate psychiatric evidence are confined to predictions of dangerousness. On the contrary, his response to these concerns is at times flippant; he refers to one writer's statement that the transcript in the Jack Ruby trial "screams out . . . the clarion message that psychiatric testimony should never be permitted in the courtroom" as "shrill" (p. 123), and he characterizes a judge's suggestion that "psychiatry [is] an empirical and speculative science with rather elastic notation and terminology which is usually wise after the event" as "testy" (p. 350).

1. See generally T. SZASZ, *PSYCHIATRIC SLAVERY* (1977); T. SZASZ, *THE MYTH OF MENTAL ILLNESS* (2d ed. 1974); T. SZASZ, *THE MANUFACTURE OF MADNESS* (1970); T. SZASZ, *PSYCHIATRIC JUSTICE* (1965); T. SZASZ, *LAW, LIBERTY AND PSYCHIATRY* (1963).

2. Burger, *Psychiatrists, Lawyers, and the Courts*, FED. PROBATION, June 1964, at 7.

3. See, e.g., Kaplan, *An Academic Lawyer Plays Armchair Analyst: Some Speculations on the Relevance of Psychoanalysis to the Law*, 46 NEB. L. REV. 759, 797 (1967).

4. Ennis & Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 CALIF. L. REV. 693, 752 (1974).

5. *Id.* at 728-29.

Bromberg hints that these concerns are unwarranted because the adversary system adequately screens psychiatric evidence. He rejects the much-debated proposal that psychiatric testimony should be provided by impartial court-appointed examiners. Although psychiatrists are frequently uncomfortable with the adversary process because opposing counsel attack their credibility and because legal rules limit their ability to qualify testimony, Bromberg believes the inherent subjectivity of much psychiatric testimony necessitates cross-examination and rebuttal. This reliance on the adversary system is disquieting, for it suggests that Bromberg's enthusiasm for extensive use of psychiatry in legal proceedings is based as much on an unenunciated belief in the genius of the legal system as on his faith in psychiatry. Confidence in the legal system may well be warranted, but one would hope that a psychiatrist so smug about his profession's role in court would rely more heavily on the strengths of his own discipline.