

Book section: ESSAYS AND REVIEWS

Examinations of Criminal Responsibility: Foundations in Mental Health Case Law, by Richard I. Frederick, David F. Mrad and Richard I. DeMier (Sarasota, FL: Professional Resource Press, 2007), 292 pp., \$39.95.

REVIEWED BY
*Jack A.
Gottschalk, J.D.,
M.A., M.S.M.*

These three authors, all with Ph.D.s in Clinical Psychology and Certified in Forensic Psychology by the American Board of Professional Psychology have produced a reader-friendly book that will be helpful to mental health professionals as they study the issue of insanity and its impact on criminal justice.

What the authors have succeeded in doing is to take a look at the issue of how the courts, going back to *Arnold* (1724), *Hadfield* (1800), and *M'Naughten* (1843), have wrestled with the problem of seeking a balance between criminal responsibility and claims of insanity.

The authors have examined 22 cases in this research journey in order to provide a reasonably clear understanding of what *insanity* means in the criminal justice system.

The history of how the courts have attempted to achieve that delicate balance begins with *Arnold*, the famous case in which Justice Tracy held that in order to escape punishment for a crime the defendant had to have the lack of understanding akin to that of a wild beast. In *Hadfield*, where the defendant had attempted to kill the king, it was held that the defendant had met the wild beast test. The authors note that the key difference in the cases was that in the former the defendant acted pro se while in the latter there was excellent defense counsel.

© 2009 by Federal Legal Publications, Inc.

The last of the three cases that the authors used as a foundational basis for the book was *M'Naughten* where the defendant successfully interposed a defense of not guilty by reason of insanity. The standard for an insanity defense was propounded as a result of that case and has come to us some 160 years later as the most prevalent insanity defense in the United States.

Following *M'Naughton*, the authors examined cases where the court had to deal with the question of what constitutes mental disease as, for example, in *Pike v. New Hampshire* (1810) where it was decided that insanity without expert testimony should not be considered a product of alcoholism. Also examined was *Parsons v. Alabama* (1886) where the court had to deal with the problem of irresistible impulse.

Any examination of the insanity defense must, of course, inevitably include relevant applications of the Constitution. The authors reviewed a number of federal cases as part of their research. These cases included *Powell v. Texas* (1968) where the Supreme Court resisted the creation of an insanity defense set in constitutional terms. The decision rendered in *Finger v. Nevada* (2001) where the Supreme Court held that the insanity defense was a constitutional right was also reviewed.

The examination of relevant federal cases coming from the U.S. Court of Appeals for the District of Columbia (termed by the authors as “The D.C. Experiment”) will also be of interest to readers. In *Durham v. U.S.* (1954), that court, basing some of its reasoning on the Pike case, basically held that criminal behavior could be excused only if it were a product of mental disease or mental defect. The weight of expert psychiatric testimony was given additional importance in that case although, in two later federal cases, *McDonald* (1962) and *Brawner* (1972) the court attempted to lessen that weight. The attempted assassination of President Reagan in 1981, however, and resulting subsequent federal legislation

creating the Insanity Defense Reform Act of 1984, changed the federal approach by making mental disease or defect an affirmative defense to a federal crime.

There are other important sections of the book to include one where the authors explore what is meant by *wrongfulness* when considering an insanity defense. This issue has been dealt with by the authors in their review of several cases where the problem of defining wrong had to be considered by the court.

Another section that will be of value to readers is that dealing with the critical question of what to do with people acquitted of a criminal charge because of insanity. Relevant court decisions on this topic which the authors examined include *Foucha v. Louisiana* (1992). In that case the Supreme Court rejected the Louisiana position that it could hold a defendant indefinitely even though cured of illness, on the ground that there might still be a danger to society. The court held that this was a violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment.

Finally, the authors reviewed several cases dealing with the proper discretion of a court in imposing an insanity defense on a competent defendant, and the allied issue of the right of a defendant to accept criminal responsibility even when facts are present to support an insanity defense.

The book is a highly recommended one to read and is a worthwhile addition to a library for reference.

Copyright of Journal of Psychiatry & Law is the property of Federal Legal Publications Inc. and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.