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[Packer, I.K. \(2009\). *Evaluation of Criminal Responsibility, Best Practices in Forensic Mental Health Assessment*. Oxford University Press. \\$35.00.](#)

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I met Ira Packer, Ph.D., ABPP, years ago early in my training and I was very impressed with his attention to detail and his passion within the field of forensic psychology. Since that time, I have read some of his scholarly articles, which have focused to some degree on the forensic practice of conducting insanity evaluations as well as more generally the professional practice within forensic psychology. Consequently, I looked forward to reading his new book.

In *Evaluation of Criminal Responsibility*, Packer provides a thorough history of the insanity defense, including relevant landmark case law and standards. He prepares examiners to conduct methodical empirically based NGRI evaluations, gathering collateral information pertaining to the defendant's mental state before, during, and after his criminal offenses. Importantly to this book and to my review, is Packer's consideration of professional ethics when conducting criminal responsibility evaluations.

Packer provides the reader with a concise history of the insanity defense and relevant standards dating back nearly 2000 years with the main focus on the last 200 years. A nice feature of the book for those writing scholarly articles or performing evaluations in other jurisdictions is an appendix that includes the particular state or government insanity standard.

Packer offers insights into the consequences of abolishing the insanity defense. For example, after the abolition of the insanity defense in the State of Montana, the number of defendants adjudicated incompetent to stand trial rose significantly suggesting that the system continued to consider the nexus between severe mental illness and criminal behavior and that some offenders should not be held to the same accountability as other offenders. Packer comments on research following insanity acquittees whose rates of recidivism are quite low compared to those offenders who were criminally convicted for their crimes. Further, he points out that acquittees are more likely to be rehospitalized than reincarcerated.

In addition to insanity, he covers other areas linked to affirmative defenses such as diminished capacity and extreme emotional disturbance. Packer provides a fine analysis of the recent U.S. Supreme Court case that tackled issues of insanity and diminished capacity in *Clark v. Arizona*. He points out that the Court ruled there was no constitutional requirement to include any specific language as part of an insanity defense. The Court agreed that if the defendant did not appreciate what he was doing, he would also not be able to know that his actions were wrong. The

'nature and quality' prong was deemed not to add anything substantive to the insanity criteria. When considering diminished capacity, *Clark* was only able to produce lay rather than expert testimony as to his specific intent to kill a police officer, and ultimately the Court's opinion restricted forensic-mental-health-expert testimony.

Throughout the book Packer emphasizes that a finding of not guilty by reason of insanity is a moral and legal issue rather than a psychological or psychiatric one. Packer provides the reader with valuable information to be considered when taking on a case to evaluate for insanity. For example, he emphasizes the importance of considering the ramifications of a defendant's self-report (often confession of a past crime) during an insanity evaluation. Specifically, he considers 5th Amendment and ethical issues that a forensic examiner must be mindful of during an examination of an offender's mental state at the time of an offense(s). He offers case law that provides insight into the issues of defendant self-incrimination and premature sharing of information by a prosecution expert to a prosecutor regarding the defendant's self-report of his offense. He highlights the attorney-client-privilege nature of a defendant's self-report to a defense expert and he encourages the forensic examiner always to be aware of the laws and criminal rules of procedure in the jurisdiction in which he or she practices. Throughout the book Packer considers examiner styles in obtaining information, i.e., confrontational style.

Evaluation of Criminal Responsibility flows into the preparation of the NGRI evaluation. Packer focuses on ethical issues such as competency and experience to be an expert witness in such a case. He is mindful of attorney bias in forensic evaluations and recommends that an expert not thoroughly discuss his or her opinion with an attorney until a thorough evaluation is completed. He also considers the ethical issues of taking on a case with multiple roles, such as consultant and expert, and how the expert must always strive to be objective when such issues arise.

Packer is always attentive to ethical factors, including informing all parties of the nature and purpose of the examination and that the information obtained during the investigative evaluative process is not confidential. He also cites case law pertaining to the rights of a defense attorney to be present during an insanity interview.

The hallmark of an insanity evaluation is collecting collateral data that provides information about the defendant's functioning and mental state around the time of the offense. Packer has an entire chapter titled "Data Collection." He is thoughtful of not only the need to be exhaustive in one's search for collateral data, but also to confront the defendant about discrepancies in information and symptoms he reports, as this is not a therapeutic evaluation, but rather a forensic examination. He also discusses evidence-based issues regarding admissibility in court. For example, Packer discusses third-party data and whether the information an expert gleans from interviews with third parties can be used in court to establish insanity.

He also raises the point that an expert should be conservative with his choice of considering a defendant's unadjudicated past criminal behavior, and that it should be used if it offers valuable information regarding the defendant's mental status at the time of the offense.

Packer offers some thoughts about the use of psychological testing in NGRI evaluations. He lists some survey studies amongst psychologists who conduct NGRI evaluations and whether they use psychological testing or not and what tests they do employ. He recommends that examiners conducting NGRI evaluations consider psychological testing relevant to the issue of criminal responsibility, tests that are reliable and valid, and appropriate for the population being examined. Specifically to NGRI evaluations, he focuses on the Rogers Criminal Responsibility Assessment Scales and notes that the external validity of the RCRAS has never been established. Packer encourages the examiner to use the RCRAS as a model or template to consider the defendant's symptoms and to integrate data into an analysis relevant to the particular insanity legal criteria.

Packer analyzes the roots of a defendant's criminal behavior concerning symptoms of mental illness and whether these symptoms are related to the offense and if so, whether there is a direct or indirect relationship. He instructs forensic examiners to test rival hypotheses as to the cause of an offender's criminal behavior and not to assume that, just because the defendant had symptoms of mental illness at the time of the offense, these symptoms were the cause of the crime(s).

Packer formally takes on the issue of knowledge of wrongfulness when conducting NGRI evaluations. He stresses that experts not rely too much on the defendant's beliefs about what they think wrongfulness currently means during the evaluation. Although this information should not be ignored, the insanity evaluation's focus is the defendant's mental state at the time of the offense and not the defendant's mental state during the evaluation. He offers valuable insight and case law regarding moral versus legal wrongfulness and points out that most jurisdictions recognize both types; however, when considering moral wrongfulness, most jurisdictions have not distinguished between objective and subjective wrongfulness. Packer uses case law addressing wrongfulness to inform examiners of the importance of being an aid to the trier of fact in understanding how the defendant's psychiatric symptoms impact on his or her reality testing and capacity to reason regarding moral and legal statutes of insanity.

Finally, Packer provides the reader with recommendations on how to write the insanity report and testify to its findings. He encourages evaluators to address the relationship of psychiatric symptoms to each of the criminal offenses in cases with multiple charges. Although he acknowledges that the field of forensic psychology and psychiatry is conflicted in its practice in offering ultimate-opinion testimony in NGRI evaluations, he discourages such opinions when there is insufficient data to support the opinions.

In summary, *Evaluation of Criminal Responsibility* is an excellent resource to the beginning forensic examiner or the more experienced forensic mental health professional. This book is quite reminiscent of the literature I reviewed on the insanity defense for my ABPP board certification exams in forensic psychology. Accordingly, the book is a great resource for those aspiring to take their written and oral exams and whose practice samples include an insanity evaluation.

Ira Packer's work in this book is representative of his professional evaluative and scholarly standards and his dedication to the field of forensic psychology.