

**PRINCIPLES AND PRACTICE OF
MILITARY FORENSIC PSYCHIATRY**

PRINCIPLES AND PRACTICE OF MILITARY FORENSIC PSYCHIATRY

Edited by

R. GREGORY LANDE, D.O.

Colonel, MC, USA

Director, Forensic Psychiatry Program Walter Reed

Army Medical Center

*Consultant in Forensic Psychiatry to the Surgeon General
of the Army*

Clinical Associate Professor of Psychiatry

Uniformed Services University of the Health Sciences

and

DAVID T. ARMITAGE, M.D., J.D.

Colonel (Ret.), MC, USA

Medical Advisor, U.S. Army Physical Disability Agency

Clinical Professor of Psychiatry,

Uniformed Services University of the Health Sciences

Co-director, Forensic Psychiatry Fellowship, Walter Reed

Army Medical Center

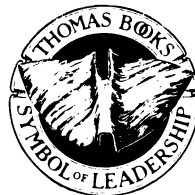
*Emeritus Consultant in Forensic Psychiatry to the
Surgeon General of the Army*

Foreword by

William K. Suter, J.D.

Major General, USA (Ret.)

*Clerk of the Supreme Court
of the United States*



CHARLES C THOMAS • PUBLISHER, LTD.

Springfield • Illinois • U.S.A.

Published and Distributed Throughout the World by

CHARLES C THOMAS • PUBLISHER, LTD.
2600 South First Street
Springfield, Illinois 62794-9265

This book is protected by copyright. No part of
it may be reproduced in any manner without
written permission from the publisher.

© 1997 by CHARLES C THOMAS • PUBLISHER, LTD.

ISBN 0-398-06752-X

Library of Congress Catalog Card Number: 96-52386

With THOMAS BOOKS careful attention is given to all details of manufacturing and design. It is the Publisher's desire to present books that are satisfactory as to their physical qualities and artistic possibilities and appropriate for their particular use. THOMAS BOOKS will be true to those laws of quality that assure a good name and good will.

Printed in the United States of America
SC-R-3

Library of Congress Cataloging-in-Publication Data

Principles and practice of military forensic psychiatry / edited by R.
Gregory Lande and David T. Armitage ; foreword by William K. Suter.
p. cm.

Includes bibliographical references and index.

ISBN 0-398-06752-X (cloth)

1. Military psychiatry—United States. 2. Forensic psychiatry—
United States. I. Lande, R. Gregory. II. Armitage, David T.

[DNLM: 1. Military Psychiatry—United States. 2. Forensic
Psychiatry—United States. UH 629.3 P957 1997]

UH629.3.P75 1997

614'.1—dc21

DNLM/DLC

for Library of Congress

96-52386

CIP

CONTRIBUTORS

DAVID T. ARMITAGE, M.D., J.D.

Colonel (Ret.), MC, USA

Medical Advisor, U.S. Army Physical Disability Agency

Clinical Professor of Psychiatry, Uniformed Services University of the Health Sciences

Co-director, Forensic Psychiatry Fellowship, Walter Reed Army Medical Center

Emeritus Consultant in Forensic Psychiatry to the Surgeon General of the Army

WALTER T. COX, III, J.D.

Chief Judge, U.S. Court of Appeals for the Armed Forces

Captain (former), JA, USA

CARROLL J. DIEBOLD, M.D.

Major, MC, USA

Clinical Instructor in Psychiatry, Uniformed Services University of the Health Sciences

Chief, Department of Psychiatry & Neurology, Womack Army Medical Center

BRENT GORSUCH FILBERT, J.D.

Lieutenant Commander, JA, USN

Law Instructor, U.S. Naval Academy

Special Assistant to the Chief of Naval Operations

FRANCIS ATWOOD GILLIGAN, J.D., LL.M., S.J.D.

Colonel (Ret.), JA, USA

Senior Legal Advisor, U.S. Court of Military Appeals for the Armed Forces

Chief Trial Judge, U.S. Army (Ret.)

HARRY C. HOLLOWAY, M.D.

Colonel (Ret.), MC, USA

Professor of Psychiatry and Neurosciences, Uniformed Services University of the Health Sciences

JOHN B. HOLT, J.D.

Commissioner, U.S. Court of Appeals for the Armed Forces

Adjunct Professor of Law, George Washington University School of Law

Lieutenant Commander (Ret.), USN

EDMUND G. HOWE. III, M.D., J.D.

*Professor of Psychiatry, Uniformed Services University of the Health Sciences
Major (former), MC, USA*

R. GREGORY LANDE, D.O.

*Colonel, MC, USA
Director, Forensic Psychiatry Program Walter Reed Army Medical Center
Consultant in Forensic Psychiatry to the Surgeon General of the Army
Clinical Associate Professor of Psychiatry, Uniformed Services University of the Health Sciences*

BRUCE ALAN LEESON, PH.D.

*Chief, Mental Health Division, U.S. Disciplinary Barracks, Fort Leavenworth
Major, MS, USAR*

EUGENE R. MILHIZER, J.D., LL.M.

*Lieutenant Colonel, JA, USA
Professor of Criminal Law, The Judge Advocate General's School
Staff Judge Advocate, The National Training Center and Ft. Irwin*

KEVIN DALE MOORE, M.D.

*Lieutenant Commander, MC, USN
Forensic Psychiatrist
Clinical Instructor in Psychiatry Uniformed Services University of the Health Sciences*

ANN E. NORWOOD, M.D.

*Colonel, MC, USA
Assistant Professor and Assistant Chairman of Psychiatry, Uniformed Services University of
the Health Sciences*

JAMES BRADLEY REYNOLDS, M.D.

*Senior Clinical Instructor, University of Colorado Health Science Center
Forensic Psychiatrist, Institute for Forensic Psychiatry Colorado Mental Health Institute
Major (former), MC, USAF*

ELSPETH CAMERON RITCHIE, M.D.

*Major, MC, USA
Clinical Assistant Professor of Psychiatry, Uniformed Services University of the Health Sciences
Assistant Chief, Outpatient Psychiatry Service, Walter Reed Medical Center*

VAUGHAN EDWARD TAYLOR, J.D.

*Assistant Professor, and Reserve Senior Instructor, Criminal Law Division,
The Judge Advocate General's School
Major (Ret.), JA, USAR*

BRIAN PAUL WEBER, J.D.

Captain, JA, USA

Defense Counsel, Ft. Irwin Field Office, U.S. Army Trial Defense Service

STEPHEN A. YOUNG, M.D.

Assistant Professor of Clinical Psychiatry, Uniformed Services University of the Health Sciences

Private Practice of Forensic and General Psychiatry

Major (former), MC, USA

HOWARD V. ZONANA, M.D.

Professor of Psychiatry, Yale University School of Medicine

Clinical Director, Connecticut Mental Health Center

Lieutenant Commander (former), USPHS

To my family: My mother, Anne, who modeled compassion, my father, Maurice, who taught objectivity, my wife, Brenda, who tirelessly supports our relationship and the radiant light of my life, my son, Galen.

R.G.L.

To Barri, my love and my law, and our cherished ones—Nancy, David and Alice.

D.T.A.

FOREWORD

I am honored to pen the foreword to this book. Forensic psychiatry is an interesting and important subject for our society as a whole. Military forensic psychiatry occupies a significant segment of that subject. Serious literature focusing on forensic psychiatry in the military community is lacking. Thus, this superb book fills a void and will be essential reading for all of those involved in the complex areas where law and medicine converge.

The chapters of this book were written by a number of highly qualified authors, all of whom have the requisite training and rich experience to speak with authority. The authors include practicing military and civilian psychiatrists, a practicing civilian attorney, Assistant United States Attorneys, and the Chief Judge of the United States Court of Appeals for the Armed Forces. The authors include professionals from all branches of the military services.

The book includes a wide range of topics, including an introductory chapter on the history of forensic psychiatry in the United States military. Some of the other subjects covered are defense counsel strategies, malingering, syndrome testimony, disposition of those acquitted by reason of insanity, military child forensic psychiatry, counter intuitive principles in child abuse cases, military medical malpractice, ethics and regulation of military psychiatry. My not mentioning some covered subjects in no ways diminishes their importance.

It is my hope that military personnel in the medical and legal communities will read and study this book. It will surely be a standard text at military educational institutions. I also hope that military personnel not in the medical and legal professions, especially commanders and leaders, read this book to acquaint themselves with serious matters that affect the members of our armed forces and their families.

Lastly, I am confident that this text will be quite useful for professionals in the civilian community. It will provide them with valuable insight into the complex world of military medicolegal issues and their resolution. This text will greatly assist civilians practicing forensics in the military system by

increasing their knowledge and contributing to the quality of their finished products.

WILLIAM K. SUTER, J.D.
Major General, USA (Ret.)
Clerk of the Supreme Court of the United States

PREFACE

Military forensic psychiatry represents an intersection of three cultures: medicine, law, and the military. Each brings an impressive heritage to the amalgam that creates the new. The serious study of military forensic psychiatry is a relatively recent development, although scrutiny identifies historical antecedents. This book is designed to advance the profession by filling a void long neglected. The reader will gain familiarity with the various tensions that exist at this professional intersection and the never ceasing accommodations. For some outside observers the pace of change no doubt appears glacial, but years of wisdom gathered through experience, tradition, and history act as a prudent brake. Change does occur but only after a collective reflection from a large, complex organization.

Preparing this text for publication highlighted the dynamic nature of military forensic psychiatry. The U.S. Supreme Court opinion in *Jaffee v. Redmond*, 1996 WL 315&41 (1996) is one example where the Court has recognized a privilege protecting confidential statements made to psychotherapists. To ensure that the reader benefited from this new development, the editors sought counsel from the United States Court of Appeals for the Armed Forces. John B. Holt, J.D., in collaboration with colleagues at the Court, provided an expeditious review.

As a result of the *Jaffee* decision, the psychotherapist privilege is now recognized. The military courts, accordingly, must recognize the privilege under Mil.R.Evid. 501(a)(4) unless the prohibition in Mil.R.Evid 501(d) that prevents the application of a doctor-patient privilege is construed to apply to the new psychotherapist privilege.

The narrow issue is the scope of Military Rule of Evidence 501(a)(4) and the limitation in 501(d). The courts have held that this rule precludes recognition of a privilege for statements made to medical officers, including both psychiatrists and psychologists, during mental health treatment, or to civilian physicians or psychiatrists during treatment. See *United States v. Mansfield*, 38 MJ 415 (1993), *affirming* 33 MJ 972 (AFCMR 1991); *United States v. Toledo*, 25 MJ 270 (CMA 1987). Because of the Rule 501(d) exclusion, these decisions probably remain valid even after *Jaffee*.

There is now debate among lawyers whether Mil.R.Evid. 501(d) precludes

recognition of a more narrow common law privilege for communications made to social workers and civilian psychologists. At issue is whether a social worker or a psychologist is “a medical officer and civilian physician” and therefore is within the ambit of the exclusionary rule. If communications made to social workers and civilian psychologists are protected, but communications made to medical officers and civilian physicians are not privileged, the result makes little sense as a matter of public policy.

Perhaps the President of the United States will amend the Military Rules of Evidence either to create some form of psychotherapist-patient privilege or unequivocally to reject this privilege. Alternatively or additionally, the courts most certainly will be tasked to address the present legal imbroglio. Until there is further guidance on both the legal and policy issues, both the clinician and the patient are in a tenuous position— uncertain of legal protection of the confidentiality of the professional relationship. This uncertainty continues to cloud the atmosphere of confidence and trust and thwarts a patient’s frank and complete disclosure of facts, emotions, memories, and fears.

Other significant recent changes in the law, incorporated in the text, contribute to the excitement, uncertainty, and debate that accompany the practice of military forensic psychiatry.

ACKNOWLEDGMENTS

Preparing a new multicontributor text for publication requires the assistance of many more people than is apparent from perusing the list of authors. Among the “unseen” essential participants are secretaries, fact researchers, proofreaders, and copyright holders. Although each chapter contributor doubtlessly could acknowledge a variety of helpers, the editors determined that the assistance provided by several persons and publishers was of special significance to completion of the text.

The following persons generously provided needed specialized information for which the editors are grateful: CAPT Noel Howard, MC, USN, Naval Council of Personnel Boards, Arlington, VA; Richard Granville, M.D., J.D., CDR, Steven Mawn, MC, USN, Mary Jo Wiley, R.N., J.D., all of the Department of Legal Medicine, Armed Forces Institute of Pathology, Washington, DC; COL John E. Baker, J.A., CPT, Diane M. Sheehey, J.A., both of the Office of the Center Judge Advocate, Walter Reed Army Medical Center, Washington, DC; Kevin Ceckowski, M.S.W., Department of Social Work, Walter Reed; William S. Fulton, Jr., U.S. Army Judiciary; and Tara Hunter, National Resource Center on Child Sexual Abuse.

Two talented and dedicated professionals labored over the many chapter drafts, offering not only technical advice but also suggestions on improving the communicative value of the text. Many thanks to Barri J. Armitage, M.A., and Brenda N. Lande, M.L.S., for their tireless efforts.

The administrative coordination of author submissions, extensive typing of draft revisions and the innumerable other secretarial tasks necessary for completion of this book were generously supported by Sharon R. Taylor.

The challenge of maintaining consistency in format and word usage fell to Mimi Mullen who devoted long, long hours to retooling the enormous number of references. Mimi also offered helpful suggestions on wording changes that improved the readability of the text. Her unfading cheerfulness and enthusiasm were highly valued accouterments. Much thanks is given to Charles A. Peck, Jr., M.D., who sacrificed his own administrative support by detailing Mimi to the publishing project.

Substantial portions of Chapter 16 were reprinted with the kind permission of John Wiley & Sons, Ltd. The original (same author) was published as

“Psychiatric Malpractice in the Military,” in *Behavior Science & the Law*, Vol. 7, No. 3, pp. 287–315 (1989).

A similar expression is due to the American Academy of Psychiatry and the Law for kind permission to reprint “The Disposition of Insanity Acquittees in the United States Military,” from Vol. 18, No. 3, pp. 303–309 (1990).

CONTENTS

	<i>Page</i>
<i>Foreword—William K. Suter</i>	xi
<i>Preface</i>	xiii
CHAPTER 1: THE HISTORY OF FORENSIC PSYCHIATRY IN THE U.S. MILITARY—R. Gregory Lande	3
INTRODUCTION	3
COLONIAL AMERICA	4
THE POST-COLONIAL PERIOD	9
THE CIVIL WAR	13
MODERN MILITARY FORENSIC PSYCHIATRY	23
 CHAPTER 2: MILITARY LAW—Francis Atwood Gilligan	 28
INTRODUCTION	28
FEATURES OF THE MILITARY LEGAL SYSTEM	31
Types of Courts-Martial	31
Disposition of Charges	32
Article 32	33
Investigation in Place of Grand Jury	33
Appellate Rights	34
Sources of Law	35
Hierarchy	35
Constitutional Rules	36
Right to Expert Consultant	36
Right to Introduce Evidence	38
Rules of Evidence	38
Sources of Information	41
Credibility of Expert Witnesses	44
Note-taking and Questions	45
Rules of Procedure	45

Competence to Stand Trial	47
Sentencing Issues	47
Posttrial Issues	48
Ineffective Counsel	49
Jurisdiction of Military Courts	50
Crimes and Defenses	51
Mental Responsibility	52
 CHAPTER 3: THE CLINICAL ASSESSMENT OF MILITARY CRIMINAL BEHAVIOR—<i>James Bradley Reynolds</i>	 57
INTRODUCTION	57
SANITY BOARD	58
Sanity Board: The Law	58
Sanity Board: Competency Standard	62
Sanity Board: Mental Responsibility Standard	63
Sanity Board: The Process	64
Sanity Board: Clinical Assessment of Competency	69
Sanity Board: Clinical Assessment of Mental Responsibility	73
COURT-MARTIAL CONSULTANT	75
Court-Martial Consultant: Defense	76
Court-Martial Consultant: Prosecution	78
CONSULTANT: QUASI-JUDICIAL PROCEEDINGS	79
CONSULTANT: EVALUATION OF WITNESSES/VICTIMS	80
CONSULTANT: EDUCATOR TO THE COURT	81
PARTIAL MENTAL RESPONSIBILITY	81
Partial Mental Responsibility: Specific Intent	82
Partial Mental Responsibility: Culpability	83
EXTENUATION, MITIGATION AND AGGRAVATION ISSUES	84
Mitigation: Defense	84
Mitigation: Death Penalty	85
THE MILITARY CRIMINAL FORENSIC REPORT	87
Sanity Board	87
Abbreviated Report	88
The Full Report	89
Defense Consultant Evaluation	91
Discovery of the Sanity Board Report	92

Miscellaneous Reports	93
Ethical Issues in Report Writing	93
CONCLUSION	93
 CHAPTER 4: THE PSYCHIATRIC DEFENSE IN MILITARY LAW—<i>Vaughan Edward Taylor</i>	95
INTRODUCTION	95
THE PSYCHIATRIST AS AN EXPERT WITNESS	100
THE HISTORICAL PERSPECTIVE	103
APPLICATION OF THE INSANITY DEFENSE: PROBLEMS	110
THE PRESENT INSANITY TEST	114
CURRENT ISSUES	116
AN EXAMPLE	117
 CHAPTER 5: MALINGERING AND THE UNITED STATES MILITARY—<i>Elsbeth Cameron Ritchie</i>	122
INTRODUCTION	122
THE CLINICAL DEFINITION OF MALINGERING	122
MALINGERING AND THE MILITARY	123
Case Example	124
MALINGERING AS A CRIMINAL OFFENSE	126
MALINGERING IN MILITARY CASE LAW	126
SUICIDAL BEHAVIOR, PERSONALITY DISORDERS AND ADMINISTRATIVE SEPARATIONS	129
GULF WAR SYNDROME: MALINGERING?	130
DETECTING A MALINGER IN THE MILITARY	131
OUTCOME OF THE “MALINGERING SCENARIO”	131
ETHICAL ISSUES	132
 CHAPTER 6: ASSESSMENT OF DANGEROUS BEHAVIOR—<i>Kevin Moore</i>	134
INTRODUCTION	134
THE DANGEROUS MILITARY PATIENT	134
THE DANGEROUS NONMILITARY PATIENT	136
LIMITATIONS IN THE CLINICAL ASSESSMENT OF THE DANGEROUS PATIENT	138
LANDMARK LEGAL DECISIONS	141
EPIDEMIOLOGY	143

CLINICAL ASSESSMENT	144
Assessment of Imminent Dangerousness	144
Assessment of Long-Term Dangerousness	146
EVALUATION PROPOSALS	150
 CHAPTER 7: VOLUNTARY INTOXICATION UNDER MILITARY LAW	 155
INTRODUCTION — <i>Brian Paul Weber</i>	155
VOLUNTARY INTOXICATION DEFINED	155
Voluntariness	156
Intoxicants	163
Intoxication	164
CRIMINAL OFFENSES GENERALLY	166
Criminal Acts: <i>Actus Reus</i>	166
Criminal State of Mind: <i>Mens Rea</i>	167
Concurrence of the Act and the Intent	168
Strict Liability	169
Proof of General and Specific Intent	169
Aggravating Circumstances	170
CRIMES RELATING TO INTOXICATION	171
DEFENSES RELATING TO INTOXICATION	173
General Excuse: Involuntary Intoxication and Insanity	173
Failure of Proof: Voluntary Intoxication	174
Other Defenses: In General	179
ROLE OF THE EXPERT WITNESS	180
 CHAPTER 8: DISORDER AND SYNDROME EVIDENCE	 187
— <i>Brent Gorsuch Filbert</i>	187
INTRODUCTION	187
DEFINING STRESS DISORDERS AND SYNDROMES	188
USES OF DISORDER AND SYNDROME EVIDENCE	188
ADMISSIBILITY OF STRESS DISORDER AND SYNDROME EVIDENCE	189
TYPES OF DISORDERS AND SYNDROMES	191
Posttraumatic Stress Disorder	191
Vietnam Syndrome	192
Gulf War Syndrome	193
Rape Trauma Syndrome	194

Child Sexual Abuse Accommodation Syndrome	195
Therapist-Patient Sex Syndrome	195
INTRODUCING STRESS DISORDER AND SYNDROME EVIDENCE IN A FORENSIC SETTING	196
CONCLUSION	198
CHAPTER 9: SPECIAL MILITARY FORENSIC ISSUES—<i>R. Gregory Lande</i>	199
INTRODUCTION	199
MILITARY ABSENTEEISM	200
MILITARY THEFT	202
MILITARY SECURITY	208
IMPERSONATIONS	212
CHAPTER 10: CLINICAL PRACTICE AND EXPERT TESTIMONY—<i>Stephen A. Young</i>	215
INTRODUCTION	215
SETTINGS OF TESTIMONY	216
Administrative Action Boards	216
Physical Evaluation Boards	219
Courts-Martial	221
GENERAL GUIDELINES FOR SUCCESSFUL EXPERT TESTIMONY	226
Organize Your Data	226
Ask for Clarification When Necessary	227
When in Doubt, Ask the Lawyers	227
Be Honest	228
Review All the Data	228
Be Aware of the Setting	228
Boundaries Between the Mental Health and Legal Systems	230
CONCLUSIONS	230
CHAPTER 11: MILITARY INSANITY ACQUITTEES—<i>R. Gregory Lande</i>	232
INTRODUCTION	232
THE MILITARY INSANITY DEFENSE	233
CHARACTERISTICS OF THE ACQUITTEE	234

TWO CLINICAL CASES	234
ARTICLE 76b: THE PROPOSED SOLUTION	236
SUMMARY	237
CHAPTER 12: THE UNITED STATES DISCIPLINARY BARRACKS AND MILITARY CORRECTIONS	
— <i>Bruce Alan Leeson</i>	239
INTRODUCTION	239
HISTORY	239
OVERVIEW	240
ADMINISTRATION AND CUSTODY	243
MEDICAL	244
PROGRAMS	244
DIRECTORATE OF TREATMENT PROGRAMS	245
RESEARCH	247
CUSTODY LEVEL	249
RECIDIVISM	252
SENTENCE LENGTH	252
FEMALE INMATES	255
INSTITUTIONAL INFRACTIONS	256
DEATH SENTENCE INMATES	256
ACUTELY MENTALLY ILL	258
INVOLUNTARY TREATMENT	259
SUICIDE	261
HIV	262
RIOT	263
THE FUTURE	266
CHAPTER 13: MILITARY ADMINISTRATIVE PSYCHIATRY	
— <i>Carroll J. Diebold</i>	269
INTRODUCTION	269
ADMINISTRATIVE ACTIONS	270
MENTAL HEALTH EVALUATIONS OF MEMBERS OF THE ARMED FORCES	276
DRUG AND ALCOHOL EVALUATIONS	278
PSYCHOLOGICAL AUTOPSY	286
RECEIVING THE REQUEST FOR A PSYCHOLOGICAL AUTOPSY	288

REVIEWING THE DATA	288
INTERVIEWING COLLATERAL SOURCES	289
WRITING THE REPORT	290
SECURITY CLEARANCE EVALUATIONS	291
LINE OF DUTY DETERMINATIONS	296
COMPASSIONATE REASSIGNMENTS	298
SUMMARY	299
 CHAPTER 14: FORENSIC ASPECTS OF CHILD AND ADOLESCENT PSYCHIATRY IN MILITARY PRACTICE	
— <i>David T. Armitage</i>	305
INTRODUCTION	305
REGULATION OF CHILD AND ADOLESCENT IN THE MILITARY	307
GENERAL ISSUES INVOLVING EVALUATION OF CHILDREN AND ADOLESCENTS	310
Attitudes and Reactions of the Psychiatrist	310
Consent and Refusal Issues	312
Competency Issues	313
Confidentiality/Privilege	314
Medical Records and Reports	316
Purpose and Scope of Psychiatric Involvement	317
The “Mature Minor”	319
Hospitalization of Minors for Psychiatric Disorders	320
The Suicidal Minor	323
OTHER FORENSIC ISSUES	324
The Abused Child	324
Psychological Injury	332
The Mentally Retarded Minor	333
Custody and Termination of Parental Rights	335
Juvenile Delinquency, Status Offenses and Crime	337
MALPRACTICE IN CHILD PSYCHIATRY	340
Overview	340
Areas of Concern	341
SUMMARY	344
 CHAPTER 15: COUNTERINTUITIVE ASPECTS OF CHILD SEXUAL ABUSE CASES IN MILITARY PRACTICE	
— <i>Walter T. Cox III & John B. Holt</i>	347

INTRODUCTION	347
COUNTER-INTUITIVE RULE #1: EXPERT WITNESS CANNOT OPINE AS TO THE VICTIM'S CREDIBILITY	348
The Facts	348
The Intuitive Reaction	349
The Counter-Intuitive Rule and Its Rationale	349
Application of the Counter-Intuitive Principle in Courts-Martial	351
COUNTER-INTUITIVE RULE #2: PROFILE EVIDENCE IS INADMISSIBLE TO PROVE THAT AN ACCUSED WAS A CHILD ABUSER	353
The Facts	353
The Intuitive Reaction	354
The Counter-Intuitive Principle and Its Rationale	354
Application of the Counter-Intuitive Principle in Courts-Martial	356
COUNTER-INTUITIVE RULE #3: CHILD SEXUAL ABUSE VICTIM'S BEHAVIOR PATTERNS ARE ADMISSIBLE FOR ONLY A LIMITED PURPOSE OF ASSISTING THE TRIERS OF FACT TO UNDERSTAND THE EVIDENCE AND OF DISABUSING MEMBERS OF WIDELY HELD MISCONCEPTIONS OF THAT BEHAVIOR	360
The Facts	360
The Intuitive Reaction	361
The Counter-Intuitive Principle	361
Application of the Counter-Intuitive Principle in Courts-Martial	362
COUNTER-INTUITIVE RULE #4: THE PROFESSIONAL RELATIONSHIP WITH A CLINICIAN IS NOT ALWAYS A SANCTUARY FOR AN ACCUSED SERVICEMEMBER SEEKING HELP FOR A PROBLEM OF CHILD SEXUAL ABUSE	365
The Facts	365
The Intuitive Reaction	366
The Counter-Intuitive Principle	366
Application of the Counter-Intuitive Principle in Courts-Martial	368
CONCLUSION	370

CHAPTER 16: PSYCHIATRIC MALPRACTICE IN THE MILITARY—<i>David T. Armitage</i>	377
INTRODUCTION	377
THE FERES DOCTRINE: A BAR TO ACTIVE DUTY MALPRACTICE CLAIMS	378
MANAGEMENT OF MALPRACTICE CLAIMS/LITIGATION: PROCEDURES	380
MILITARY PSYCHIATRIC MALPRACTICE: PROFILES AND CASES	383
Profiles for Malpractice	383
Problems in Profile Development	384
Legal Bases for Malpractice Actions	385
REGISTRY OF LEGAL MEDICINE MALPRACTICE CASE REVIEW	385
Suicide	386
Overdose of Prescribed Drug	388
Improper Sexual Conduct	389
Improper Diagnosis/Treatment of a Physical Condition	389
Failure to Treat Psychosis	390
Negligent Release	391
Other Cases	391
COMPARISON WITH CIVILIAN INSURERS	392
CONSEQUENCES OF MALPRACTICE FOR THE MILITARY PSYCHIATRIST	393
OVERSEAS PRACTICE	396
THE NATIONAL PRACTITIONER DATA BANK	398
CRIMINAL PROSECUTION FOR MALPRACTICE	400
THE BILLIG CASE	401
DEPARTMENT OF DEFENSE INITIATIVES IN SUPPORT OF QUALITY CARE AND REDUCTION OF MALPRACTICE	402
SUMMARY	406
 CHAPTER 17: FORENSIC PSYCHIATRIC ASPECTS OF TERRORISM—<i>Harry C. Holloway & Ann E. Norwood</i>	 409
INTRODUCTION	409
WHAT IS TERRORISM?	410
WHAT IS A TERRORIST ACT?	411
THE FREQUENCY OF TERRORISM	413

THE PSYCHOLOGY OF TERROR	414
THE SANCTIONING OF TERROR AS A POLITICAL TOOL	418
THE LOGIC OF TERRORISM FOR THE TERRORIST	419
Historical Roots	419
Using the Media	420
The Success of Terrorism as a Tactic	421
THE SUPPORT AND STRUCTURE OF TERRORIST GROUPS	422
PROFILES OF TERRORIST GROUPS AND TERRORISTS	424
THE TERRORIST AS MENTALLY ILL	426
The Forensic Evaluation of the Terrorist	430
HELPING THE VICTIMS	432
Medical and Legal Concerns	432
Use of Profile Data on Terrorists	435
Dealing with Hostage Problems	436
Treatment Guidelines	441
Effects on Children and Families	443
SUMMARY	445
 CHAPTER 18: LEGAL REGULATION OF PSYCHIATRIC PRACTICE IN THE MILITARY—<i>Howard V. Zonana</i>	 452
INTRODUCTION	452
CONFIDENTIALITY	454
CIVIL COMMITMENT	454
PROFESSIONAL LIABILITY	459
DISCUSSION	462
 CHAPTER 19: ETHICAL ISSUES IN MILITARY MEDICINE: MIXED AGENCY—<i>Edmund G. Howe</i>	 469
INTRODUCTION	469
COMBAT: DUTIES TO SERVICEMEMBERS	470
Returning Servicemembers to Combat Duty	470
Military Medical Triage	473
Circumstances after Nuclear Attack	475
Threat of Biological and Chemical Warfare	477

Treating Servicemembers for Combat Fatigue	479
Military Physicians' Own Interests	480
COMBAT: DUTIES TO ENEMY FORCES	482
Duty to Ignore Personal Views	482
Duties When Captured	483
COMBAT: DUTIES TO CIVILIANS	483
Grounds for Deviating from Legal Requirements	484
Therapeutic Agents Less Than Fully Tested	485
Treating Civilians for Military or Political Gain	485
Treating Civilians on the Basis of Beneficence	486
COMBAT: PREVENTIVE ETHICS	487
Refusing to Serve	487
Nuclear War	488
Conditions for Recruitment and Deployment	488
Combat Practices Violating Equity	489
PEACETIME: OBLIGATIONS TO SERVICEMEMBERS	497
Maintaining Confidentiality	498
Special Circumstances Involving HIV Infection	500
Suicidal Patients	501
PEACETIME: OBLIGATIONS TO SERVICEMEMBERS' FAMILIES	503
Duty to Take Initiative	503
Duties When Resources Are Limited	504
Care for Family Members	504
Experimental Treatments	505
Conflicts between Patients and the Military	505
CONCLUSION	506
<i>Principal Case Index</i>	515
<i>Index</i>	517

**PRINCIPLES AND PRACTICE OF
MILITARY FORENSIC PSYCHIATRY**

Chapter 1

THE HISTORY OF FORENSIC PSYCHIATRY IN THE U.S. MILITARY

R. GREGORY LANDE, D.O.

INTRODUCTION

Modern military forensic psychiatry has a rich medical heritage. The barely discernible historical roots were first planted during the American Revolution. During this turbulent period, the American colonies were forging a political government while pursuing a war of independence. Despite the absence of an organized military and a ideologically united populace, the war was prosecuted. British political traditions and military principles provided a transitional footing. The British military system was eventually adopted to serve emerging American interests. As America pursued the War of Independence, certain practices developed. These ideas arose from military service, medical care, and the deprivations of war. Over two hundred years ago alcohol abuse, homesickness, malingering, psychosomatic illness, and crime depleted the military ranks of battle ready soldiers.

The inexperienced colonial medical and legal professions each sought, in different ways, to preserve the military fighting strength. Military law accomplished this by advancing command authority. The British rules of war were adopted early but were rapidly modified. Military medicine at the time was primitive. Throughout the American War for Independence the medical system heroically struggled to keep pace with the casualties. Early lessons learned emphasized prevention, sanitation, and attention to the human spirit.

Colonial observations and theories, forged from the heat of battle, formed links in an unbroken chain to modern day military forensic psychiatry. The story of military forensic psychiatry historically unfolds from the general to the specific. The modern day subspecialty continues to honor, through practical application, those early observations. Timeless themes of prevention, education, command consultation, medicolegal liaisons, and personal readiness proficiency are the cornerstones of modern military forensic psychiatry.

COLONIAL AMERICA

The outbreak of hostilities commencing the American War of Independence demanded a military-political mobilization. The initial structure necessary to field an army, and run a government, borrowed heavily from British traditions. When George Washington took command there were about fourteen-thousand soldiers.¹ Military training, logistics, and a unified command structure were goals, not realities. Washington was impressed "that their spirit has exceeded their strength."¹ The numbers of regulars of the Continental probably never exceeded seventeen-thousand men.¹ Although this number was supplemented by as many as three-hundred-thousand who served shorter hitches, Washington relied primarily on his regulars.¹

The organization of the Continental Army required support from both medicine and law. Responding to the call to arms, colonial medical students in Edinburgh and London quit their studies and returned home. This elite cadre of the academically trained was joined by patriot physicians and apothecaries who had learned their art through apprenticeships.²

American medicine in the period immediately preceding the war was very slowly transitioning to a more scientific understanding.³ Bloodletting was still a common treatment for a number of conditions such as pleurisy and rheumatism. Inoculations for smallpox were recognized, but irregularly practiced. The colonial pharmacy included wine as a medicine for fever, mercury for inflammations, various emetic preparations, and diverse questionably efficacious compounds derived from oils, acids, and powders.

One contemporary medical authority believed that "the physical practice in our colonies is so perniciously bad, that excepting surgery, and some very acute cases, it is better to let nature, under a proper regimen, take her course . . ."³

Given the state of the colonial art, "the military medical phase of the revolution was frequently chaotic, chronically discouraging, and sometimes calamitous to the point of threatening the whole war effort."²

There was a desperate need to establish a medical structure for the war effort. This required hospitals, doctors, and a reliable way to secure medical supplies. The Continental Congress, responded by issuing an order establishing a military hospital on July 17, 1775.⁴ This order created the Army Medical Department. Eventually 1,700 physicians would be recruited, of which about one-hundred had medical degrees.⁴

From the outset the Revolutionary Medical Department was mired in controversy.⁴ Military surgeons were selected for important assignments based less on medical experience than on personal relationships. The first three directors general of the young medical department were an embarrassment. All three left office following various political and legal accusations.