

Assessing Sex Offenders: Problems and Pitfalls, by Terence W. Campbell, (Springfield, Illinois, USA: Charles C. Thomas), 247 pp., \$61.95. (home study available via Highland Psychological Services at <http://www.hps-ce.com/>)

Policy

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A person has served a prison sentence for a sex offense and is scheduled for release. Should that person be confined indefinitely, in order to protect the public? In some states within the United States of America, the answer is almost always no, because there is no special statute allowing for such confinement. But in other states¹ a judge or jury decides, case by case, whether to civilly commit such a person as a sexually violent predator (SVP).² Although the laws vary somewhat from state to state, a representative statute requires a finding that a person has been convicted of a sexually violent offense and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.³

In a five-to-four decision, the U.S. Supreme Court upheld the constitutionality of one of these civil-commitment statutes, based on the societal need to protect the public.⁴ But the swing justice, Anthony Kennedy, warned in his concurring opinion that this type of civil commitment could not withstand constitutional scrutiny if, in practice,

1. treatment turned out to be a sham or a pretext for punishment, or
2. it were shown that mental abnormality is too imprecise a category to offer a solid basis for concluding that civil commitment is justified.⁵

Assessing Sex Offenders can be read as one psychologist's reply to concerns like those of Justice Kennedy.

Campbell addresses both of Justice Kennedy's concerns, but focuses the book primarily on two other questions:

1. Are the treatment programs available to committed SVPs sufficiently effective?
2. Do these statutes rely on assessments of acceptable accuracy to identify sex-offender recidivism risk?

We will consider these four issues as Kennedy 1 and 2, and Campbell 1 and 2.

Kennedy 1. Justice Kennedy writes that incapacitation to protect the public from a particular dangerous person is a legitimate purpose for either criminal or civil confinement, but he warns that retribution and general deterrence⁶ are legitimate reasons for criminal, but not civil, confinement. Thus it would be unconstitutional for a state to use civil commitment to remedy a risk caused by a too-lenient plea bargain. Campbell expresses concern that the statutes are misused in just that way.

Campbell 1. Campbell focuses considerably on a superficially related, but ultimately distinct, issue: whether sex-offender treatment is effective. Campbell accurately reports that available research does not show that sex-offender treatment reduces recidivism. This is an important fact, one that should be acknowledged by evaluators in their reports and testimony, but it does not preclude confinement. As I understand the U.S. Supreme Court's rulings,⁷ society can confine someone who is mentally ill and dangerous even if it is expected that the person will not respond to treatment. Efforts must still be made to treat the mental illness and reduce the danger, but even if no known treatment is expected to be effective for the person, protective confinement⁸ can still be constitutionally permissible. At times it appears that Campbell loses sight of the distinction that the primary purpose of civil commitment is to protect the public, and that provision of treatment is a secondary issue, albeit an important one.

Kennedy 2. Justice Kennedy's second concern regards whether mental abnormality is too imprecise a category to offer a solid basis for concluding that civil commitment is justified. This concerns the first two of what are generally considered to be the three prongs of the SVP civil commitment statutes:

1. whether the person has a mental abnormality or personality disorder
2. which causes
3. him or her to be likely to engage in future acts of sexual violence.

Campbell presents an exposé of the *Diagnostic and Statistical Manual of Mental Disorder—Fourth Edition (DSM-IV)*⁹ and acknowledges that according to at least one author “my position marks me as a marginal figure far removed from the mainstream of contemporary thought and opinion” (p. 189). In my opinion, Campbell's *criticisms* of DSM-IV are not out of the mainstream, but, at least as I understand them, his *conclusions* are.¹⁰ He writes that DSM-IV 1) has a classification accuracy that is too poor for it to be used for testifying about whether or not a person has a mental disorder (p. 186); 2) is not sufficiently standardized to assist an evaluator in diagnosing paraphilia or personality disorder (pp. 186-187); 3) provides insufficient guidance to diagnosticians because there are no decision trees for paraphilia or personality disorders (p. 187); 4) cannot be used to form the basis for testimony because the inter-rater reliabilities are unknown (p. 187); 5) has no coherent, guiding theory, relies excessively on clinical judgment, and, because it is frequently revised, remains at an experimental stage of development and therefore must not be used in legal proceedings (p. 188); 6) has poorly defined criteria sets leading to inventions and intuitive impressions and therefore cannot be used in legal proceedings (p. 188); and 7) must not be used in court because its appearance of precision substantially exceeds its actual accuracy (pp. 188-189). I believe that a more mainstream view would be that, when using

the DSM-IV to guide testimony, one should take care to acknowledge imprecision in psychodiagnosis and the lack of one-to-one correspondence between the current psychiatric diagnostic system and legal definitions of “mental abnormality” or “personality disorder.” Yes, psychiatry is not an exact science, but no, that does not mean that mental health professionals should never testify about whether or not a person meets criteria for a mental disorder.

Campbell 2. Campbell questions whether available methods for estimating recidivism risk are accurate enough to support psychological testimony. In other words, are psychologists good enough at predicting re-offense for our testimony to effectively guide judges or juries in deciding whom to lock up and whom to turn loose? He concludes that currently available methods are not good enough to guide these important decisions. Campbell asserts that utilizing currently available methods to guide decision-making would be less accurate than just releasing all sex offenders.

In short, Campbell asserts that psychological science, in its current state, cannot effectively aid judges and juries in deciding whether a person should be locked up because he or she is mentally ill and sexually dangerous. In Campbell’s view, sexually violent predator laws are bad policy because the science necessary to implement them is not good enough. He concludes “When evaluating previously convicted sex offenders, SVP evaluators rely on procedures of chance accuracy, weighing commitment to treatment programs of marginal effectiveness. Given these considerations, the cost of SVP statutes appear to substantially exceed whatever benefit they can claim” (p. 220).

Practice

But in my daily work I do not write public policy, pass laws, or testify about whether a law is “a good witch or a bad witch.” In Donald Rumsfeld’s words, “As you know, you

have to go to war with the Army you have, not the Army you want.”¹¹ Similarly, we don’t go into court with the psychology we would like to have or with the law we would like to have. In my daily work as a forensic psychologist I attempt to apply the best psychological science we have to the law as it is written. In doing so I accept responsibility to acknowledge limitations in current psychological science. Campbell’s book can help testifying experts recognize and acknowledge limitations in our methods.

Unfortunately, unlike Doren’s 2002 *Evaluating Sex Offenders: A Manual for Civil Commitment and Beyond*,¹² Campbell’s *Assessing Sex Offenders* does not serve well as a manual for practitioners. Campbell’s focus, as promised in the book’s subtitle, is on problems and pitfalls. Still, as a practitioner who conducts evaluations relevant to a civil commitment statute, I would have liked to have seen more focus on possible solutions to those problems and pitfalls. The summary on the book’s back cover suggests that such solutions will be offered, but with regard to practical solutions for current practitioners, the text of the book does little to elaborate on this summary: “Ultimately, this book challenges psychologists to recognize and respond to their scientific responsibilities. When testifying as expert witnesses, ethical obligations prohibit psychologists from misinforming and misleading legal proceedings. These same obligations necessitate that psychologists support their opinions with relevant research data.”

Assessing Sex Offenders does a good job of pointing out problems and pitfalls in assessing sex offenders relevant to SVP laws. Campbell concludes that those problems and pitfalls are so severe that the laws should not stand. It is up to policy makers to make that determination. Meanwhile, psychologists and psychiatrists who evaluate sex offenders within the current framework must look elsewhere for practical solutions to the problems and pitfalls Campbell describes.

Notes

1. According to Campbell in 2002, 17 states had such statutes.
2. Not every case goes before a judge or jury. Typically, some people are screened out as not likely to meet criteria, without necessitating a trial. A person facing civil commitment has a right to trial.
3. 2004 Florida Statutes, 394.912(10) and related statutes.
4. *Kansas v. Hendricks*, 521 U.S. 346 (1997); see also *Kansas v. Crane* 534 US 407 (2002).
5. *Kansas v. Hendricks*, *ibid.*
6. *General deterrence* refers to crime prevention achieved through instilling fear in the general population through the punishment of offenders. *Specific deterrence* seeks to prevent crime through instilling fear in the specific person being punished. Thompson*Nelson Online Dictionary of the Social Sciences, downloaded 2/7/05 from <http://socialsciencedictionary.nelson.com/SocialDict.asp?SA=yes&TOS=3&Criteria=SPECIFIC+DETERRENCE>
7. See *supra* note 4.
8. To protect the public from the confined person.
9. American Psychiatric Association (1994). *Diagnostic and statistical manual of mental disorders—4th edition*. Washington, DC: American Psychiatric Association.
10. "It is difficult to get a man to understand something when his salary depends upon his not understanding it.—Upton Sinclair. Quoted by Molly Ivins in "Our New Realities." Downloaded 7/6/05 from <http://www.funnytimes.com/notfunny/2004121.html>.
11. U.S. Defense Secretary Donald Rumsfeld in a response to a soldier's question at Camp Buehring, a staging area in the Kuwait desert, December 8, 2004; downloaded 2/10/05 from <http://www.cnn.com/2004/WORLD/meast/12/08/rumsfeld.troops/>. Rumsfeld was widely criticized for that response: "His answer was wrong. If you're attacked by surprise, you go to war with the army you have. But if you've planned the war a year in advance and you initiate the attack, you have the opportunity—and obligation—to equip your soldiers with what they'll need." Kaplan, F., Rumsfeld vs. the American Soldier, posted to *Slate* 12/8/04 at 3:01 p.m. Downloaded 2/11/05 from <http://slate.msn.com/id/2110818/>. Campbell might argue that similar criticism would apply to legislators and governors who have passed SVP laws and judges who have upheld them.
12. Doren, D. M. *Evaluating sex offenders: A manual for civil commitments and beyond*. Thousand Oaks, CA: Sage. Home study available via Highland Psychological Services at <http://www.hps-ce.com/>. For a review see Barone, N.M. (2002). Book review of Doren, D. Evaluating sex offenders. A manual for civil commitment and beyond, in *Journal of Psychiatry and law*, 31, 235-237.

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Revisited 3/5/06 by Gregory DeClue, Ph.D., ABPP

I concluded my review of Campbell's book (DeClue, 2005) as follows:

Assessing Sex Offenders does a good job of pointing out problems and pitfalls in assessing sex offenders relevant to SVP laws. Campbell concludes that those problems and pitfalls are so severe that the laws should not stand. It is up to policy makers to make that determination. Meanwhile, psychologists and psychiatrists who evaluate sex offenders within the current framework must look elsewhere for practical solutions to the problems and pitfalls Campbell describes (p. 287).

Although I do not believe that that is literally false, I now believe that it is seriously misleading, and I would like to take this opportunity to clarify: For those psychiatrists and psychologists, including myself, who insist on performing evaluations relevant to Sexually Violent Predator proceedings in spite of the problems and pitfalls Campbell describes, *Assessing Sex Offenders* does not provide solutions to those problems. But for psychiatrists and psychologists considering whether or not to perform such evaluations, Campbell's book is one excellent source for considering the problems and pitfalls inherent in the work.

Reference

DeClue, G. (2005). Assessing sex offenders: Problems and pitfalls. *Journal of Psychiatry & Law*, 33, 283-288.