The sixth edition of *Coping With Psychiatric and Psychological Testimony*, written and edited by David Faust but based on the original work of Jay Ziskin, is at one and the same time exciting, thoughtful, and disappointing. What makes it exciting and thoughtful is the collection of chapters by various practitioners and scholars, from different disciplines, who, from several perspectives, present both theoretical and practical material regarding the parameters of expert testimony.

What makes the book disappointing is that Faust, the editor of this volume, largely ignores the way that forensic assessment and expert testimony are currently practiced. Curiously, Faust begins with a historical overview, noting that when the first edition of this book, written by Jay Ziskin, came out during the 1970s, Ziskin’s critique of expert testimony was quite successful in getting experts to pay closer attention to the scientific bases of their opinions and testimony.
Faust acknowledges that the field has come a long way since then by undergoing much self-examination, resulting in higher quality forensic assessment. Yet, all of the chapters in the first half of this sixth edition that are written by Faust cover in great detail material that suggests that these changes and advances never happened. His critiques, in short, are appropriate for the way psychology and psychiatry in the forensic area were practiced 30 to 40 years ago, but certainly not at the present time.

A review, for instance, of the references in several of the chapters in the first half of the book reveal that over 60 percent of them are to works written more than 20 years ago, and over 30 percent of them, more than 30 years ago. But *Coping With Psychiatric and Psychological Testimony* is intended to be a handbook, not a historical treatise.

For example, Faust’s critique of risk assessment for the potential of future violence refers back to Meehl’s classic work from the 1950s that pointed out the superiority of actuarial over clinical assessment. He follows up with a discussion of more recent actuarial approaches to the assessment of violence, contrasting them with the very poor outcomes of clinical assessment.

Faust is beating a dead horse because the clinical versus actuarial debate has largely been silenced now. It has been replaced by the well-accepted concept of structured professional judgment in which contemporary research informs the structure of the interview. In structured professional judgment, somewhere between 20 and 35 variables have been delineated by the research as being relevant to the assessment of future violence, and the mental health professional appropriately uses these parameters as a guide in conducting interviews. In the lengthy chapters dealing with the clinical versus actuarial debate and the superiority of actuarial instruments, Faust devotes only one paragraph to structured professional judgment and then does not discuss it further.

The simple fact is that very few practitioners use either this purely clinical or purely actuarial approach anymore. Even though Faust cites Monahan’s work from 1981, which points out the superiority of actuarial over clinical approaches, he makes no mention of the fact that Monahan was the principle investigator in the MacArthur Foundation research, a 20-year research project that identified over 30 domains relevant to violence risk assessment and, in fact, forms the basis for several of the structured professional judgment approaches. Faust rarely gives credit to others who have developed some of the other major improvements to the forensic field, sometimes making it sound as if all the positive new ideas were his own or those of Ziskin.

In a similar manner, Faust ignores the progress that forensic assessment has made in the past 20 years. The current standard of practice is for examiners to use multiple data sources, generating hypotheses from each of them, and then looking for consistencies across various sources of data. Only those hypotheses that are consistent across multiple data sources go into the final opinion. These multiple data sources include clinical interviews; psychological tests; interviews with family, friends, and witnesses; medical records;
employment records; and police reports, to name only a few. This technique, structured professional judgment, is widely accepted and has been used since the early 1980s.

In fact, Faust says that this is the proper technique to use, but then, as noted above, faults people for not using it, when, in fact, the vast majority of forensic clinicians do so. In short, Faust is attacking an approach that is rarely used anymore, in essence beating the same dead horse by stating that the current level of forensic practice deserves the same critiques that were made by Ziskin in the 1970s and 1980s.

Although Faust has a chapter in which other psychologists discuss the development of forensic assessment instruments, he does not discuss them at all. These have been around since the mid-1980s and are instruments specifically designed to assess functional legal capacities, such as competency to stand trial, competency to waive Miranda rights, criminal responsibility, and so forth. These assessments are structured around the specific legal concept at issue and do not rely on generalizations from clinical data to legal conclusions, which have often been found irrelevant by judges.

In fact, in the second half of the book, Faust again talks about not generalizing from clinical data to legal conclusions, ignoring these various assessment instruments that have been around for well over 20 years and supplement clinical data to focus on the functional legal capabilities. Additionally, his extensive discussions of lack of validity and reliability in psychological assessment never even mention these forensic assessment instruments, even though they are now in common use.

Faust also misinterprets legal cases in a variety of ways. He dismisses clinical approaches to assessment, saying that they do not meet the *Daubert* (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 1993) criteria of testable hypotheses and known error rates. This is a flawed perception because so often in clinical work there is not a testable hypothesis or known error rate, but clinical assessments are admissible because they are still helpful to the trier of fact. For instance, what is the testable hypothesis in a child custody evaluation? Who is the better parent? Or in an evaluation of competency to stand trial? Or in a criminal responsibility evaluation? Is the test whether the judge agrees with the conclusion?

Clearly not. These kinds of clinical forensic judgments do not lend themselves to the kind of scientific analysis that Faust describes the *Daubert* case as standing for. In fact, this is a misinterpretation of *Daubert*. Justice Blackmun, who wrote the majority opinion in *Daubert*, stressed that the Federal Rules of Evidence applied to expert testimony in scientific, technical, and other specialized knowledge but that the discussion within the *Daubert* case would be restricted to the scientific domain because that was the matter at issue in the lawsuit (whether a particular medication caused birth defects).

In other words, criteria other than the ones cited could well apply to technical and specialized knowledge, but these are not discussed in the *Daubert* case because they were not at issue at that time. Nevertheless, Faust presents his discussion as if the *Daubert* criteria were the only ones that can be used, and, therefore, clinical forensic work just does not measure up. Faust’s analysis is applicable only if a practitioner were to argue that
psychology is a hard science. No clinician would ever make that argument, recognizing that clinical forensic practice is a blend of scientific, technical, and specialized knowledge.

It was not until the case of *Kumho Tire Co. v. Carmichael* (1999) that the realm of specialized experience was considered; this was in a case involving an expert on tire tread design, who based his opinion on years of professional experience rather than on scientific, empirically based experiments. Faust dismisses this line of case law in a very cavalier manner, with an idiosyncratic misinterpretation of the case indicating that the court ruled that scientific testimony was acceptable and experience-based testimony was not.

In fact, the actual history of this case revealed that the expert’s experience-based testimony was rejected only at the trial level because it supposedly did not meet the *Daubert* criteria, which were interpreted only using scientific criteria. The Court of Appeals for the Eleventh Circuit, however, ruled that the testimony should be allowed because experience-based testimony should not be evaluated according to the scientific criteria enumerated in *Daubert*. The U.S. Supreme Court stated that *Daubert* should be applied, but in a flexible manner, and the judge may substitute other criteria instead of dealing with testable hypotheses and error rates that may not apply to areas of expert testimony that are not hard science. The Court spoke of these criteria as not being “dispositive,” but rather that the appropriate test was relevance and reliability: Is the proposed testimony relevant to the issue at hand, and is it valid? In other words, does it come from some well-established body of knowledge?

Faust, in short, has pulled out of context one aspect of the legal standard and totally ignored the broader context within which the cases must be understood. He also ignores the 2000 addendum to the Federal Rules of Evidence that expanded Rule 702 to include the discussion in *Kumho Tire Co. v. Carmichael* (1999); that the judge, as gatekeeper, needs to consider whether the expert has based his or her opinion on sufficient data and whether those data have reliably been applied to the matters at hand: again, a very far cry from the idiosyncratic misinterpretation asserted by Faust.

Faust also misrepresents some classic studies. He refers to psychologist David Rosenhan’s studies from the 1970s described in his article “On Being Sane in Insane Places” as studies of malingering. According to Rosenhan (1973), the purpose of the research was to illustrate the concept of social labeling theory, not malingering. He demonstrated that once a person receives a label, in this case a diagnosis, the system acts to perpetuate it. It was Ziskin’s misinterpretation of the study that led to its misuse as a study of malingering, which it was never intended to be. In fact, at an American Psychological Association Master Lecture Series in 1982, Rosenhan, who was one of the invited speakers, criticized Ziskin for misinterpreting the results of his study in referring to it as a study of malingering (Rosenhan, 1983).

In summary, the sixth edition of *Coping With Psychiatric and Psychological Testimony* is a mixed collection of some very good chapters and some very out-of-date analyses. Some of the useful chapters even include ones by Faust himself in the second half
of the book, in which he concisely and compellingly notes some difficulties in current interpretations of psychological tests, for example, when an examiner sees abnormality where it does not exist or sees normal functioning when, in fact, there is pathology. He gives a particularly telling example of a test in which a perfect score would result in an individual being placed in a range called *mildly impaired*.

The writing in this section of the book is crisp, simple, and easy to follow, unlike what characterizes the ponderous and outdated first section. There appears to be a disconnect between the first and second half of the book. This book would have been far better if Faust had truly assessed the current state of forensic practice rather than the way it was practiced 20 to 30 years ago.

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**References**