



The Jury

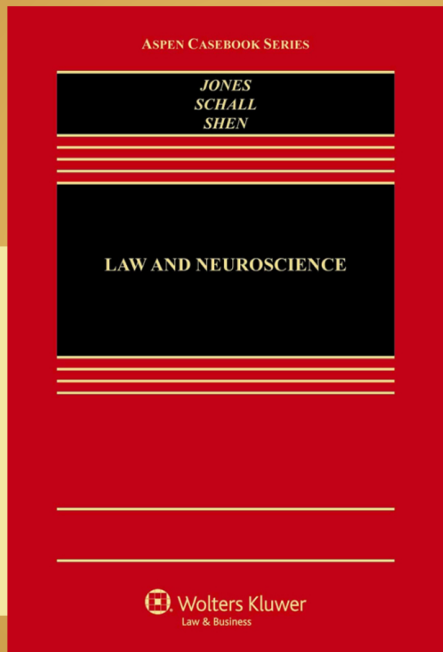
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THE JURY EXPERT BOOK REVIEW

LAW AND NEUROSCIENCE

OWEN D. JONES, JEFFREY D. SCHALL
AND FRANCIS X. SHEN

Review by Rita Handrich, Ph. D.

Law and Neuroscience

Aspen Casebook Series

by Owen D. Jones, Jeffrey D. Schall, Francis X. Shen

Publisher: Wolters Kluwer, 816 pages, \$189.

I EXPECTED TO LIKE THIS BOOK since I am intensely interested in neurolaw advances. What I did not expect was to find a reference manual that succinctly (if 800+ pages can ever be described as “succinct”) overviews the burgeoning literature (for both civil and criminal practices) and actually teaches the critical thinking skills necessary to avoid the immediate and uncritical “gee whiz” reactions many have to the “sciencey” nature of neurolaw testimony.

As a voracious reader and a veteran scourer of electronic databases, I often prepare myself to be disappointed when opening newly published professional books since they are almost always out of date by the time they are published. This one is different. When I read the quote below, I grinned and realized this text would not simply summarize, but also inform readers and encourage the development of critical thinking through the relaying of case narratives and interpretation of research

and law that is naturally engaging to those of us with an interest in the area.

“Even if fMRI could reliably diagnose psychopathy, it wouldn’t necessarily reduce a defendant’s culpability in the eyes of a judge or a jury. Ultimately, the law is based on an individual’s rational, intentional action, not brain anatomy or blood flow”, says Stephen Morse, professor of law and psychiatry at the University of Pennsylvania. “Brains don’t kill people. People kill people,” says Morse.

The first 250+ pages of this newly published book (meant to serve as both an interdisciplinary textbook and a reference guide for practitioners) supply background on the issues addressed in the intersection of law and neuroscience (aka neurolaw). They educate on brain structure and function (what part of the brain does what) and they cover early trials and issues as well as the relationships between law, science, behavior and responsibility. But they also discuss the rules of evidence and how to critically assess the validity of various neurolaw findings. This is a thread throughout the entire text and, to me, one of the most valuable

inclusions. It is one thing to read the content of various publications or listen to expert testimony. It is entirely another thing to understand how to critically evaluate the findings, how to prepare experts to teach those findings, and how to help jurors understand them.

The next part of the book covers core themes that the authors define as: the injured brain (brain death, brain injury, pain and distress), the thinking and feeling brain (memory, emotions, lie detection, judging), the developing and addicted brain (adolescent brains and addicted brains). For each of these areas, we get a bit of historical context, voluminous and yet clearly described case law, information for civil and criminal practitioners on how to present the information in court, special cases with neuroscience relevance (like the special case of fetal pain) and much more. The final section of the text looks down the road to the future of neuroscience and the law and the issues we will likely soon face in the courtroom.

I found myself skipping around the text rather than reading straight through; the extensive Table of Contents summary lends itself to that purpose. I was especially fond of the section on the Thinking and Feeling Brain since that is where much of my own interest lies. This section includes almost 200 pages on how memory works, eyewitness memory, false memories, cross-racial identification, emotional defendants, jurors and judges, lie detection using the polygraph and more recent neuroscience based lie detection strategies, neuroscience and legal reasoning, and finally, neuroscience and racist judgments. While most of it was familiar to me, the way in which the information is presented is fresh, fair, and comprehensive.

Despite the length and denseness of the text, I did not really feel as though I was reading a law textbook. My academic background is in psychology and this could have easily been an advanced psychology text on neuroscience and the law. It is written in language that is highly accessible across disciplines. While *Law and Neuroscience* is obviously a graduate school textbook, I do not recall having ever experienced reading an entire (lengthy) textbook tome and marveling at the clarity and completeness with which the information is presented throughout.

Critical or analytical thinking is tough to teach in the abstract, yet this text does just that by offering both sides of the arguments (as well as the middle perspective) on neuroscience use in the courtroom. These authors use case law to tell memorable stories of how neuroscience found its way into the courtroom. Then, rather than quickly moving on, they present criticisms, limits, and cautions. While the neurolaw arena is often written

up in the mass media as a “gee whiz” revelation or at times, characterized as a ridiculous venture into the courtroom—in this book, I never had a sense of the “gee whiz”. I also never had a sense the authors were disgusted by the inappropriate use of neuroscience in the courtroom. Instead, the text was measured, fair, logical in progression, and yet both fascinating and engaging. This was neither a witch-hunt nor a cheerleading squad and by reading it, I learned more than I ever expected to learn when I first opened the text. This is paradoxically both an introductory text and an advanced reference guide for both criminal and civil practitioners.

What Professors Jones, Schall and Shen have achieved is the unprecedented assembly and useful organization of the huge and complex neuroscience literature. Not every article is included. Not every bit of case law is included. But I felt, when I finished reading, as though I had a new respect for the breadth and depth of neurolaw. Even better, the authors plan to update the book regularly and they have a website with current case law and articles of interest to supplement the book in between editions. (The website is password protected but when you buy the book, you get the log-in information for the website.)

A few years ago, people were very excited about a new book on typeface for legal writing (we published the author’s Q&A on his book, [Typography for Lawyers](#), in 2011). *Typography for Lawyers* was hailed by many in 2011 as the ultimate writing reference guide for many trial lawyers and litigators. Similarly, *Law and Neuroscience* is perhaps the ultimate reference guide for any of us (and that would be all of us) who find ourselves faced with questions on the human brain and behavior, new technologies that give us glimpses into and dazzling pictures of the brain, questions about the role of personal responsibility in behavior, and whether neuroscience findings will ultimately inform or mislead the triers of fact. These are questions that resonate with the mock jurors with whom we do pretrial research and, I think, they are questions that will resonate with all of us in the years to come as neuroscience continues to advance into the courtroom. *Law and Neuroscience* is a book that will reside on the bookshelf closest to my keyboard—while the companion website will occupy a prominent position on my Favorites bar. ☺

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