"From . . . a practical perspective mentally ill individuals could be released prematurely with respect to their own health and/or risk to the public" (p 174). This statement communicated the authors' belief, however erroneous, that prior to *Winko* individuals may have been detained for health or "best interests" reasons. In fact, *Winko* merely reiterates the established proposition that accused persons may be detained and deprived of their liberties only as long as they pose a foreseeable, nontrivial, significant threat to public safety.

The test of "significant threat," which *Winko* defines and crystallizes, is a legal not a psychiatric concept and has never been equated with what a physician might consider to be in the patient's best interests. That was the law well before *Winko* and remains the law of Canada (since 1992). The only change *Winko* brought about was to clarify that a finding of significant threat must be a positive conclusion based on evidence; that jurisdiction over an accused based on doubt or uncertainty about significant threat cannot be justified.

I remind the authors as well that, insofar as the assessment of "significant threat" is essentially a prediction of future events or human behavior, *Winko* quite properly indicates that though the index offense or its seriousness is an appropriate factor to consider, it is not dispositive in terms of predicting future threat (p 177).

I would also definitively add that the *Winko* decision has not had the effect of rendering this "plea" more attractive, with a corresponding influx of new cases. Research suggests that individuals who avail themselves of this verdict are likely to spend much longer periods in detention than do those who are dealt with in the corrections system for having committed similar offenses.

Finally, I remind your authors that the Review Boards are required to deliberate and consider the evidence and the law in every case (p 177), and must give reasons that legally justify the ultimate decision.

As a decision maker who hears and decides literally hundreds of such cases, I can assure your researchers that *Winko*, along with the dispositive section of the Canadian Criminal Code that it illuminates (S.672.54), are considered at every hearing and inform every disposition made.

The statements that, "Unfortunately, the deliberation is a confidential matter," and the suggestion of reducing legal reasons to ". . . a standardized form . . . which allows for rigorous study in the future" (p 177) (presumably by forensic psychiatrists), show a lack of understanding of western legal process and the constitutionally protected concept of independence in decision making, on the part of Balachandra and colleagues.

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Reply

Editor:

Judge Walter accurately describes the Review Board process in Canada. He clarifies the concept of significant threat. However, his critique of the sentence "From a practical perspective, mentally ill individuals could be released prematurely . . ." requires clarification. The reader should place emphasis on the word "could." Finally, he takes issue with the sentence, "Perhaps a standardized form could be used when the reasons for disposition are made which allow for further rigorous study in the future." Limitations of our study were stated, including the difficulty in studying the complex decision-making process of the Review Board in a retrospective chart review. The development of a form was merely a suggestion.

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