

## Book Reviews

THE CRIMINAL JUSTICE SYSTEM AND MENTAL RETARDATION: DEFENDANTS AND VICTIMS. Edited by RW Conley, R Luckasson, and GN Bouthilet. Baltimore: Paul H. Brookes Publishing CO., 1992. xxvi + 299 pp.

Reviewed by Kenneth J. Weiss MD

Persons with mental retardation are overrepresented in the criminal justice and correctional systems. They are easily influenced by criminal types, more likely to be arrested, apt to confess, less likely to receive a vigorous defense, and prone to lengthy incarceration. All of these issues, and many more, are the subject of this noteworthy volume. The editors have produced a great deal of both scholarly and practical information, utilizing colleagues in the judiciary, advocacy, education, government, and law enforcement. Sadly, there was no input from psychiatry. This is presumably because psychiatry has been largely indifferent to persons with mental retardation. Nevertheless, the various perspectives represented offer the reader insights not usually found in a single work.

The book is focused on criminal justice, corrections, and rehabilitation/prevention issues. The types of information and opinion presented are wide in scope but of consistently high quality. What comes across most clearly is that the authors care. They care about the abuses and indignities suffered by persons with

mental retardation and have taken the time both to document the problem and to make concrete proposals for its solution. The reader will find concise and well-referenced chapters on epidemiology, evaluation, competency, culpability, sentencing, correctional concerns, and victimization, among others. There is judicious and helpful use of statistics, and the manuscript editing is excellent. Professor Bonnie's chapter on competency is illuminating, in his dichotomy of "competency to proceed" and "decisional competency." He includes case law examples that help to operationalize the concepts for forensic professionals. Professor Fitch's chapter on criminal responsibility is a good review of the evolution of the insanity defense. The chapter on victimization of persons with mental retardation by Professor Luckasson is sensitive and practical. In an appendix is the *amicus* brief by the American Association for Mental Retardation and others in *Penry v. Lynaugh*, with commentary about the Supreme Court's failure to acknowledge intrinsically reduced culpability of persons with mental retardation in regard to Eighth-Amendment protections. From a practitioner's perspective, I would have liked to see a chapter on examination techniques, as well as advice on how we may assist the legal profession on matters of *Miranda* warnings and confessions.

For the forensic psychiatrist who has not given particular consideration to the issues in this book, it will be enlightening. For someone who has thought about these matters I felt slightly embarrassed by not having had more sensitivity to

the problems of retarded citizens who cannot speak for themselves. The feeling was reminiscent of when I read *Madness in the Streets* (reviewed previously in the *Bulletin*): Where were we when our input was needed? How did our social systems get so out of hand? The authors of *The Criminal Justice System and Mental Retardation* do much more than gripe about the status quo—they model a call to action that psychiatrists should not fail to heed.

JOINT CUSTODY AND SHARED PARENTING (Second Edition). Edited by J Folberg. New York, London: The Guilford Press. 1991. 380 + xiii pp. \$19.95 paperback, \$45.00 hardcover.

Reviewed by Frederick N. Webber,  
MD, JD

As divorce has become a more accepted and available remedy for distressed families, the problems of creating adequate legal guidelines have become a major challenge. Judges have not learned in their formal training how to help families in the midst of such dramatic change. Most mental health workers and other social scientists do not understand the needs of the legal profession. The arcane processes of the law and the courtroom are not helpful to a family already in turmoil. Yet judges, lawyers and families need guidance as they work through the distress of restructuring their lives.

In this second edition of *Joint Custody and Shared Parenting*, Jay Folberg, Dean and Professor of Law at the University of San Francisco School of Law and past president of the Academy of Family Mediations, has collected much relevant material about the present status of joint custody as a technique for coping with the problem of “What about the children?” The concept of joint custody is discussed. Its history, the research being done to examine its efficacy, and the pros and cons are also outlined. The authors are family mediators from multiple backgrounds: lawyers, psychiatrists, and researchers.

The history of custody as a concept is outlined first. The changes in beliefs about women’s rights, the realization that children are evolving human beings not yet ready to assume adult roles, and the assumption of the central role of the nuclear family caused by the industrial revolution all played an historical role in society’s attitudes toward child custody. Judges sitting on these matters need to develop an understanding of family process. Triangulation, projective identification, or other components of family life that impact on the emotional life of those that come before the bench in a divorce hearing are not concepts studied in law school. Clark, in his textbook, *Law of Domestic Relations*, states, “[C]ustody is seldom explicitly defined by the cases. . . . The ambiguity, if any, arises from the fact that the word expresses a complex of rights and obligations.”<sup>1</sup> Custody then went to the parent who won the suit at law and the other parent was given visitation. Visitation

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describes more a trespasser relationship than a parental role. With change in the attitude toward divorce, these concepts were of little value. Family mediation services developed to assist in the task, but mediation requires compromise, often best done in a mutual or joint sharing of custody.

The factors deciding whether or not joint custody is appropriate are considered by several contributors in the first section of this text. These chapters will illustrate the conflicting attitudes and biases in this difficult process. Custody, once a male prerogative, then a feminine strength, now has become a question of equality. D. A. Luepnitz, Ph.D., a psychologist at the Philadelphia Child Guidance Clinic points out the contradiction that while 15 states were passing bills assuring men's rights to custody, Congress was failing to pass the Equal Rights Amendment.

The need of a child to be able to have a good relationship with both parents has been shown by research to be crucial. Some studies have shown that children of psychologically unavailable mothers, as those in the stress of divorce, show striking declines in functioning in every important area of development from birth to 2 years. These children appear more impaired than children exposed to physical abuse and neglect.<sup>2</sup> But until the rights of both parents are sanctioned by law and public attitude, the search to provide this will need to continue. The propensity for abuse in mediation is outlined as a technique for blackmail by the spouse to minimize support payments. Mediation's strength is as a means to

encourage the cooperation of the parents in their decisions about children so that each knows what the other is doing is important. Unfortunately, a world in which equals are not equal sometimes sabotages the hopes of this method of problem resolution.

To me, the chapters on research with their emphasis on detail proved slower reading, but these chapters were important in highlighting the conflicts surrounding implementation of a joint custody ruling. It did not help that one chart on p. 139 listed a comparative rating scale as a percentage. Finally, a discussion on the legal implications of this process reviews the legal dilemmas facing the courts when judges must reconcile multiple previous rulings, conflicting demands, and the implications outside the courtroom.

It would help in a book about custody to have more information about children's needs and reactions. J. Kelly describes children's dissatisfaction with the traditional pattern of custody and visitation (p. 56). But developmental concerns are not well documented. The emphasis on parental conflict would tend to confirm the quality of the child as another property from a marriage to be dealt with in litigation. Although this would add to an already lengthy treatise, it would add a balance that is all too necessary.

This is an important book to those who want to understand the present status of the concept of joint custody. Two appendices listing present joint custody statutes and sample agreements are useful.

## References

1. Clark HH Jr: Custody of children in Law of Domestic Relations in the United States. St. Paul, West Publishing Co., 1968
2. U.S. Congress, Office of Technology Assessment: Children's Mental Health: Problems and Services—A Background Paper, OTA-BP-H-33 Washington, DC: U.S. Government Printing Office, December, 1986

THE DISTURBED VIOLENT OFFENDER. By H Toch and K Adams. New Haven: Yale University Press, 1989. 183 pp. \$16.00 (\$25.00 cloth).

Reviewed by Alexander Greer, MA/JD

In their introduction to this volume Toch and Adams write, "[t]he subject of the disturbed offender is a tantalizing one—though admittedly depressing—but it is largely unexplored." That observation will, I think, surprise many forensic psychiatrists because the psychiatric and psychological literature on disturbed offenders—violent and otherwise—is daunting in its volume. Some of this literature arises from the role which psychiatrists play in the civil commitment process; the imposition of the "duty to warn" has generated more; and, of course, the work of forensic psychiatrists in competency to stand trial, criminal responsibility, bail, and sentencing evaluations for the courts has contributed much to what we know about disturbed offenders. Why then would the authors here write that the subject is largely unexplored? They are not com-

pletely ignorant of the psychiatric literature; early on they cite the work of Kraft-Ebbing, Benjamin Rush, and Alexander and Healy. Noticeable by its absence, however, is reference to any recent psychiatric/psychological literature on the subject. One cannot find, for example, a cite to John Monahan's National Institute of Mental Health's monograph *The Clinical Prediction of Violent Behavior*.

There is a simple, although disturbing, explanation for this gap: the scarcity of dialogue between the disciplines—and their members—that study and are generally concerned with mentally disordered offenders. Those include criminology, psychiatry, psychology—experimental and clinical, anthropology, sociology, and, in the natural sciences, biology. Toch and Adams note one source of the lack of communication. They write, "The overblown claims of mental health experts had annoyed a generation of social scientists, who ended up by condemning the substance of the clinician's concerns as well as their methods." They resulted in "a disjuncture in the field, whereby ruminations about crime causation diverged from clinical thinking, which was thereby denuded of criminological theory." *The Disturbed Violent Offender* is Toch and Adams's attempt to bridge the disjuncture. It is a mixed effort.

The research strategy devised by Toch and Adams is one that recommends itself to other researchers in the field; rather than ignore the difficulties and obstacles inherent in the study of rare events (violence by disturbed offenders

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being one type of rare event), the authors explicitly acknowledge them (not apologetically, but with clarity) and set out to create a research design that would ensure “a sample of mentally disordered violent offenders sufficiently large for multivariate statistical analyses while working within real-world limitations, such as the usual constraints on resources and time.”

They begin by selecting all inmates newly admitted to the New York State prison system in 1985. There were 12,764 such admissions; of those, 8,379 were incarcerated for violent offenses. The authors then matched the names and birthdates of the sampled cohort against client records maintained by the New York State Office of Mental Health which list the names of individuals receiving in- or outpatient treatment at any state operated facility. The search yielded 1,833 matches or about 22% of the 8,379 inmates incarcerated for violent crimes. The type of mental health treatment received by the inmates was then identified and categorized into two groups: a sample of inmates who received only forensic services and a group who had received “civil” care. It should not come as a surprise to anyone familiar with the second group that a significant *percentage* had received alcohol and/or drug treatment. Additionally, the authors searched each inmate’s Department of Correction’s file for additional information on psychiatric treatment and for a history and chronology of the inmate’s criminal behavior. This scheme of sampling (or, perhaps better, searching) is, as the authors note, advantageous

in several regards. First, it overcomes the problem of rare events studies by locating a sufficiently large sample for sophisticated statistical analysis. Second, it permits the creation of criminal and mental history for each individual inmate which permits identification of a possible relationship between emotional disorders and violence. Third, it focuses the work on the group of real interest—truly violent disturbed individuals.

The analysis to which Toch and Adams subject this rich data is in keeping with the trend toward specificity in research on the mentally ill and mentally ill offenders. Rather than talk of the mentally ill as a homogeneous group, the trend is to specify the subgroup of interest. This is a welcome development in research and is embraced by Toch and Adams. Their analysis uses a statistical technique known as cluster analysis, which can identify common attributes of subgroups within a larger sample. The technique is a powerful tool that must be used with forethought and care. Again, the authors acknowledge the drawbacks of the technique and take the reader through their decision-making step-by-step. They cannot be faulted in the rigor and explicitness of the approach, but the results of the analysis do not seem particularly revealing. The groups that the cluster analysis identifies simply do not seem to be sufficiently different in their characteristics to tell us much about the relationship between mental disorder and violence.

There is one successful section in the analysis portion, however. The section on violent offenses committed by dis-

turbed individuals is a rich detailing of the types of violent offenses and the circumstances surrounding those offenses that should be of interest to forensic psychiatrists.

I recommend that forensic mental health professionals read *The Disturbed Violent Offender* for the outline of a research strategy that is realistic and works, for the descriptive statistics about the offenders and the offenses, and for the section on offenses. The taxonomy of offenders developed here can be read to one's advantage, but may not be as revealing as hoped.

HOMICIDE: A YEAR ON THE KILLING STREETS. By D Simon. Boston: Houghton Mifflin Company, 1991. \$24.95

Reviewed by Christiane Tellefsen, MD

For a year, David Simon, a crime reporter from the *Baltimore Sun*, had unlimited and unprecedented access to the Baltimore City Police Department. He became a fly on the wall, observing a squad of homicide detectives, accompanying them on all investigations. Simon's daily notes captured dialogue, and other nuances of the detectives' relationships among themselves as well as with suspects. His diary, *Homicide: A Year on the Killing Streets* reads like a novel. Its main character is violent crime, the cops have supporting roles, and there are few happy endings.

There were 234 murders in the city in 1988, the year he followed the squad. The senselessness of that mayhem is the theme of this story. Near the end, Simon recounts an incident in which a detective is trying to get the body of an old man exhumed. His death had come about suspiciously following his marriage to a storefront preacher who had nearly perfected a routine of marry 'em-insure 'em-and-bury 'em. At the potter's field, the wrong body gets exhumed because the graves have been carelessly labeled. Learning this, the detective demands to review the cemetery manager's records. Flipping through cards of the past year's burials he realizes that half of the names are victims in his squad's cases. At the time the detective does not realize the irony; but the author does, describing the poignant moment of realization: that no matter how dogged the detectives' efforts, it all comes down to hoards of victims of senseless crimes in nameless graves.

Simon reports his story entirely from the detectives' viewpoint. He records everything about these men, their attitudes, naivete, cynicism and burn-out, and reveals the excitement and tedium of working the cases and the gratification and frustration with their outcomes.

Most of all, Simon's book provides the forensic psychiatrist with valuable insight into what happens in a case before the defendant is referred for psychiatric examination. Being a forensic psychiatrist in Baltimore, I had the unique opportunity to evaluate several of Simon's defendants, long after their interactions with the detectives. It was re-

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markable how different the crimes and defendants appear in the book, compared with their descriptions in the official police reports and psychiatric observations. These differences stress the importance of obtaining information directly from detectives and police officers when doing a forensic evaluation, as defendant's accounts may curiously change over time, and police officers tend to render only factual material in reports, keeping their opinions to themselves.

*Homicide* is valuable to anyone doing criminal forensic cases and to forensic fellows. However, unlike the textbook it can be, it is also fast-paced, fascinating, and a great story.

THERE ARE NO CHILDREN HERE.  
By A Kotlowitz. New York: Doubleday.  
1991. 324 pp. + index. \$21.95.

Reviewed by Jonas R. Rappeport, MD

This is a story of two brothers growing up in the other America, in the Henry Horner Homes in Chicago. When first met by Kotlowitz, Lafayette was 10 and Pharoah was 7. "This book follows Lafayette and Pharoah over a two year period as they struggle with school, attempt to resist the lure of the gangs, and mourn the deaths of friends, all the while searching for some inner peace." This book should be of interest to all psychiatrists, particularly forensic psychiatrists, who work with juveniles from the inner city ghetto. It is clearly written in the best reportorial fashion and conveys the stresses, problems, frustrations, and difficulties faced by these children.