

## Civil Commitment: A Therapeutic Jurisprudence Model

By Bruce Winick, JD. Durham, NC: Carolina Academic Press, 2005. 344 pp. \$48.00.

Reviewed by Tonya Teal Slawinski, PhD

During the past 50 or so years, several groups, including women, children, and elderly persons, have gained recognition and rights that they had been denied. However, people with mental illness have only a tentative grasp of the basic rights that most people enjoy. Laws and statutes created to protect the rights of individuals with mental disorders often are open to subjective interpretation, thus affording these citizens inconsistent protection. People subject to involuntary psychiatric hospitalization are particularly vulnerable to losing their liberty and rights.

Bruce Winick, JD, Professor of Law and Professor of Psychiatry and Behavioral Sciences at the University of Miami, takes a comprehensive look at civil commitment in *Civil Commitment: A Therapeutic Jurisprudence Model*. He succinctly describes how mental health care has influenced the development of civil commitment laws. More importantly, perhaps, he gives voice to the perspective of patients and captures the essence of what it is like to be blindsided by systems that are designed to protect individuals with mental illness.

The author's opening chapter on coercion and autonomy provides a detailed examination of the concerns that have influenced the development of a therapeutic jurisprudence model. He leaves no stone unturned in this discussion. He comments briefly on the importance of the therapeutic relationship and the role of mental institutions in civil commitment and explores legal and psychological implications of current civil commitment statutes. He concludes the first chapter with a schema for how mental health care providers can successfully support the rights of clients, which, he asserts, enhances the effectiveness of treatment. The author's plan for empowering people subject to involuntary hospitalization is realistic. He recognizes that coercion will continue to occur and reduces the need for it by counseling mental

health and legal professionals to support client participation in every step of the decision-making process.

As in the first chapter, Winick uses the conceptual threads of coercion and autonomy to weave together the remainder of the manuscript. For example, he methodically examines current criteria for civil commitment. He draws on a rich and diverse array of examples—from statutes that do not explicitly identify criteria that support a *parens patriae* justification for commitment, to vague definitions of terms such as mental illness, disability, and dangerousness—to create a persuasive case for how commitment determinations become subjective due to poorly defined criteria. Despite efforts to develop terminology that captures the truth of mental illness and dangerousness, it has been difficult, says Winick, to vanquish paternalism from the medical and legal perspectives of involuntary hospitalization. He states that best-interests approaches utilized by attorneys and clinicians veil a paternalistic and coercive process that diminishes liberties guaranteed by the U.S. Constitution's Due Process Clause.

Winick does not limit his discussion of commitment laws to legal and clinical concerns; he considers the perspective of the client, too. By doing so, he humanizes the impact of these laws on individuals with mental illness. He says that although clinicians and lawyers routinely make decisions about the freedom of persons with mental illness, professionals give little consideration to the effect of involuntary hospitalization on a person's self-perception, treatment outcome, or place in society.

Although Winick rails against current commitment practices, he also provides a framework for change. He explores controversies involving patients' rights and outpatient commitment. He also makes suggestions regarding how involuntary commitment processes could be better utilized. He is a true advocate for the mentally ill; he successfully advances an argument for change in a manner that will not alienate those who do not support his position.

One flaw in the book is worthy of mention. Therapeutic jurisprudence represents an idealized client-centered model that may be difficult to implement in today's economic climate. Legal and mental health professionals are under increasing pressure to weigh their roles as advocates against time management and productivity expectations. They must balance the best interests of one with the safety and well-being of many. Thus, full implementation of a therapeutic

jurisprudence model, in any mental health or legal organization, may be challenging at best. However, if the model is introduced to clinical and legal trainees, they may be more likely to integrate some, if not all, of the recommended approaches into their interactions with clients needing mental health care.

Winick succeeds in presenting complex material in a very captivating and accessible manner. The book provides a foundation for thoughtful discussion and debate on the topic of civil commitment and stimulates readers to consider how changes could be implemented. It should be required reading for professionals who work in or plan to work in any capacity with the mentally ill. It is a good resource for forensic psychiatrists who teach residents and other mental health professionals about involuntary hospitalization.

## The Art and Science of Child Custody Evaluations

By Jonathan W. Gould, MD, and David A. Martindale, MD. New York: Guilford Press, 2007. 450 pp. \$40.00.

Reviewed by Lee H. Haller, MD

Mental health professionals who perform child custody evaluations may be familiar with the publications of Drs. Gould and Martindale. These scholars collaborated to author *The Art and Science of Child Custody Evaluations*, a recent text that addresses a knotty problem. The book contains many strengths and only minimal weaknesses. Overall, the authors have done a credible job of covering the mandatory areas that must be addressed by any evaluator performing a child custody evaluation.

The book is divided into four sections. Section I is an overview of the topic. The authors define and describe the current legal standard for child custody evaluations: the best interests of the child. Next is a comprehensive summary of the topic that highlights important areas. For example, the authors discuss how one must differentiate a legal evaluation from a clinical one. Absent, however, is any mention of the historical models of child custody that preceded the best-interests standard, such as the concept of children as chattel or the tender-years presumption.

Section II describes the art of the child custody evaluation. Ethics and appropriate forensic proce-

dures are the primary subjects. Section III discusses the science of the child custody evaluation. It sets forth a description of methods for interviewing children and parents. These two sections are the nuts and bolts of the text. The authors identify the questions and areas that must be addressed for an evaluation to be thorough and therefore useful to the judge and the attorneys involved. They describe how to conduct the evaluation and frequently include lists of questions for the various areas that every evaluation should cover.

In addition, and much to the authors' credit, they urge each evaluator to perform a self-examination in an effort to identify areas of potential conflict or bias. Possible problem areas are enumerated.

Section IV provides recommended techniques for assessing allegations of child sexual abuse, domestic violence, and parental alienation. It concludes with a chapter entitled "Another Call for Humility," an apt ending. The authors cover several potential pitfalls, with recommendations for avoiding each.

The book has several strengths. It treats thorny topics such as overnight visitation for very young children. The authors offer lists of questions that an evaluator should consider during various phases of the litigation. An appendix includes sample letters of agreement that the authors recommend the parties sign at the beginning of the evaluation and at various stages of the process. Also presented are sample letters to attorneys apropos of various phases of the forensic evaluation process. Although these letters are copyrighted with the book, permission is given to the purchaser of the book to make personal use of them. An extensive bibliography with over 800 references offers easy access to additional information about particular topics.

There are a few weaknesses, as well. As mentioned, the history of child custody evaluations is absent. Thus, the reader cannot learn about techniques that have been tried and found wanting. Also, there are times when the authors become verbose; they use paragraphs to convey information when one or two sentences would suffice. In addition, there is no description of statutory requirements for child custody evaluations. The authors simply note that an evaluator must take into account state criteria. An appendix of the current child custody statutes would have been a valuable addition to the book.

One critical omission is a discussion of parents' attitudes toward psychiatric illness. Some children