

Pinals, D., and Mossman, D. (2011). *Evaluation for Civil Commitment*. New York: Oxford. 272 pages.

Reviewed by

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Abstract

Pinals and Mossman (2012) provide a significant new addition to the series “Best Practices in Forensic Mental Health Assessment” with their volume on civil commitment. While thoroughly covering the basics of the historical, legal, and empirical foundations of involuntary commitment, Pinals and Mossman also provide the reader with a real sense of how courts reason about this most “clinical” of forensic evaluations.

Keywords: civil commitment, involuntary commitment

Review

As I read Pinals and Mossman’s excellent book on civil commitment, I was reminded of a prescient comment made to me several years ago by a friend and clinical social worker. He worked on the Crisis Response Team for our county mental-health department, which was responsible for evaluating community referrals for involuntary commitment under California’s Lanterman-Petris-Short (LPS) law. His typical question as he came in to work was based on whether there were empty psychiatric beds available: “Are we locking ’em up, or turning ’em loose?” Today, in a system where many mentally ill people never enter a psychiatric hospital, but instead are held in a hospital ER during their (abbreviated) commitment, or booked into county jail, I now look back on that era as a “golden age” of resources.

As part of a series on best practices in forensic mental health, Pinals and Mossman appropriately focus on the core issues at hand, and only briefly comment on the larger social context of civil commitment. The authors do an excellent job of reviewing the legal and empirical aspects of involuntary commitment, while noting that these evaluations are typically conducted by clinicians who chiefly engage in diagnosis and treatment, rather than forensic assessment. However, Pinals and Mossman make the persuasive argument that the power of being a “gatekeeper” of a patient’s liberty is so important that it is imperative for the evaluator to have an adequate understanding of the legal and scientific foundation underlying his evaluation and opinion.

Consistent with other volumes in this series, Pinals and Mossman begin with a historical overview of civil commitment in the United States. They discuss typical issues covered in similar reviews, including the distinction between the two major societal justifications

for commitment; *i.e.*, they contrast “police powers” (for those who present a danger to themselves or others) with *parens patrie* (the need of the State to care for those who cannot care for themselves). We also learn the origin of the term “ship of fools,” (which sailed from port to port in early America, collecting and transporting the mentally ill).

Their legal overview begins with the case of *Oakes (Matter of Oakes, 1845)*, wherein Mr. Oakes was committed to McLean Asylum for a relationship he developed with a woman of “unsavory character,” Sarah Jane Neal, while his wife lay dying. Pinals and Mossman extensively discuss the case of *Lessard v. Schmidt (1972)*, rightly describing it as a “watershed” point in American civil commitment, and the impetus for national change (including passage of California’s LPS Act). In the *Lessard* decision, the U.S. District Court ruled that examinees in commitment proceedings have multiple rights, including rights to representation, Fifth Amendment-type warnings, and a burden of proof beyond a reasonable doubt. [E. Fuller Torrey conducts a contemporary interview with Alberta Lessard in his critical review of current civil commitment practices, “The Insanity Offense.”]

Beginning with *Lake v. Cameron (1966)*; commitment must take place in the least restrictive alternative) up to *Heller v. Doe (1993)*; differential standards of proof upheld for commitment of mentally retarded vs. mentally ill patients), the authors discuss modern landmark cases in civil commitment, ending with a table of pertinent cases containing thumbnail descriptions. These provide a summary overview of the applicable case law, which in itself makes the volume a handy resource for those preparing for board certification in forensic psychology or psychiatry.

Moving on to a discussion of the empirical research examining civil commitment, Pinals and Mossman touch briefly on the sea change which has occurred since 1970 in terms of the number of public psychiatric beds available, and the increasing proportion of state beds being primarily for forensic, rather than clinical, patients. They review available studies on clinical decision making in commitment determinations (including one study in which the clinician’s recent propensity to commit, the clinical setting, and bed availability were more important in the commitment decision than any patient characteristic).

The book’s next section examines preparation for and conduct of the evaluation. Here, Pinals and Mossman rightly stress foundational ethical issues such as providing appropriate notification and consent to the examinee as well as the importance of obtaining and notifying collateral sources. The authors provide a helpful template and suggestions for conducting the examination, including a checklist for possible sources of collateral information. I would have appreciated a bit more discussion of this topic since, given the limited time available for commitment evaluations, it is essential to avoid a confirmatory bias, *i.e.*, seeking information which supports the clinician’s assumptions. It is just as important to seek counterfactual information (particularly when deciding not to commit).

As they move from data collection to interpretation, Pinals and Mossman go to great lengths to provide a sense of how Courts reason about civil commitment, including legal

definitions of mental illness from various states as well as differing definitions of dangerousness and grave disability. This approach seems particularly well suited in conveying the forensic “mindset” to readers who are predominately practicing clinicians. The take-home message should be familiar to most forensic evaluators: courts are not constrained by the DSM-IV’s definitions of mental disorders and define risk primarily in terms of **behaviors** from the client’s **present** or recent **past**, not from actuarial risk-assessment instruments (ARAI) or general risk factors.

Pinals and Mossman do include a section on structured risk assessment and review the utility of several instruments (e.g., the HCR-20, COVR, BPRS, etc.) in the context of civil commitment. While their discussion provides a fairly extensive overview of the different measures, the authors wisely acknowledge that most clinicians will not have time to routinely use these tests in their evaluations.

Similarly, Pinals and Mossman provide helpful, **brief** forms which the clinician can use to gather data, to explicitly guide their reasoning in a particular case [*a la* Grisso’s (2003) competency assessment model], and to structure their presentation to the trier of fact. Like the case-law thumbnails, they are worth the price of the book.

Finally, the authors include several brief and entertaining vignettes which cover more complex or “marginal” commitment scenarios, including intoxication, HIV-positive status, and “low-level” violence. These vignettes are fairly unusual in that they are modeled on actual court decisions, and the Court’s **legal** reasoning (which is frequently different from the mental-health expert’s **clinical** reasoning) provides a cautionary tale regarding the distinction between forensic and clinical approaches to evaluations.

If this book has any significant limitations, I would say they arise because it is exactly what it claims to be: a manual of “best practices,” rather than a discussion of the current **practice** or **function** of civil commitment or a **judgment** of its effectiveness or appropriateness. The landscape of civil commitment has changed dramatically over the past few decades to the extent that many, perhaps most, patients who might have been committed before are now treated in ERs, jails, or left untreated. It is difficult to believe that only 40 years have passed since Rosenhan’s (1973) study, where patients could be hospitalized for several weeks on the basis of hearing “hollow” or “thud.”

While Pinals and Mossman do not comment extensively on the impact of these trends on society, the reader who is interested in a more complete discussion can read Susan Stefan’s (2006) or E. Fuller Torrey’s (2008) book on the topic. Stefan provides an extensive review and discussion of the national trend toward treating increasing numbers of psychiatric patients in the ER, along with potential solutions. In his book, “The Insanity Offense,” E. Fuller Torrey argues strenuously that the pendulum against commitment has swung too far, allowing many of the most dangerous or seriously mentally ill to remain untreated in the community. Together, these books provide important perspectives in obtaining a more comprehensive understanding of social and fiscal influences driving commitment practices, and their possible societal impact.

As a personal example of the schism that sometimes exists between theoretical vs. real-world events, Pinals and Mossman spend nearly a third of their book discussing completing the commitment report, providing the Court with useful information, and preparing to testify effectively. Yet in California, because there is no judicial review during the first 72 hours of a civil “hold,” such safeguards do not apply to the substantial proportion of patients who are released within three days and are therefore deprived of liberty without legal oversight. While I wholeheartedly recommend this book for those who conduct civil-commitment assessments, I can’t help but sometimes wish for the good old days when we had the (occasional) option with patients of “letting ’em in.” Far too often, the only question today seems to be how we can keep mentally ill patients “out” of our increasingly scarce psychiatric beds.

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