Chapter 16 – Mental Health Services: Legal & Ethical Issues

Civil Commitment

- Civil Commitment Laws
  - Detail when a person can be:
    - Legally declared to have a mental illness +
    - Placed in a hospital for treatment involuntarily
  - Date back to the late 19th century
- Criteria for Civil Commitment
  - Person has a mental illness & needs treatment
  - Is dangerous to self or others
  - Is unable to care for self (*grave disability)*

- The government justifies its right to commit someone to a mental health facility under 2 types of authority:
  - Exercise of Police Power
  - Exercise of "*Parens Patriae*"
- Process
  - Varies from state to state
  - Formal proceedings
    - Usually begins with a petition by a relative or mental health professional to a judge
  - Emergency Situations
    - Where there clearly is immediate danger, a short–term commitment can be made without formal proceedings

- In CA, Welfare & Institutions Code 5150 states:
  - "When any person, as a result of a mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, a member of the attending staff … of an evaluation facility designated by the county, designated members of a mobile crisis team … or other professional person designated by a county, may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72–hour treatment and evaluation."
- CA Welfare & Institutions Code 5250
- CA Welfare & Institutions Code 5260
- CA Welfare & Institutions Code 5300

Defining "Mental Illness"

- Mental illness is a legal concept
- It typically means "severe emotional or thought disturbances that negatively affect an individual's health and safety"
- Varies by state
- Not the same as psychological disorder

Assessing "Dangerousness"

- Individuals who are mentally ill are not necessarily at greater risk for dangerousness
- Mental health professionals can identify groups of people who are at greater risk than the general population for being violent, & can so advise the court

- Changes Affecting Civil Commitment
  - Following abuses of civil commitment, Supreme Court Rulings substantially limited the government's ability to commit individuals unless they were dangerous:
    - O'Connor v. Donaldson (1975): "a state cannot constitutionally confine… a non–dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family and friends."
    - Addington v. Texas (1979): More than just a promise of improving one's quality of life is required to commit someone involuntarily

- Consequences of the tightened restrictions on involuntary commitment in the 1970s and 1980s:
  - Criminalization of Mentally Ill
  - Deinstitutionalization
  - Homelessness
- Backlash against strict civil commitment laws

Sexual Predator Laws

- How should repeat sex offenders be treated?
  - "Sexual psychopath" laws — 1930-1960
    - Provided hospitalization instead of incarceration, but for an indefinite period of time
- More recently, efforts focused on incarcerating sex offenders for their crimes

Criminal Commitment

- The issues
  - If someone commits a crime while mentally ill, is s/he responsible?
  - If someone is mentally ill now, but **not** at the time of the crime, should s/he be brought to court?
  - If someone was mentally ill at the time of the crime, **but** appears fine now, should s/he be held accountable?

- Criminal Commitment is the process by which people are held because:
  - They have been accused of committing a crime and
    - are detained in a mental health facility until they can be assessed as fit or unfit to participate in legal proceedings against them

  OR
  - They have been found not guilty of a crime by reason of insanity

The Insanity Defense

- M'Naghten Rule (1843 in England)
  - People are not responsible for their criminal behavior if they do not know what they are doing or if they don't know what they are doing is wrong
- Durham Rule (Durham v. United States, 1954)
  - Broadened the criteria for responsibility from a knowledge of right or wrong to include the presence of a "mental disease or defect"

- American Law Institute (ALI) Rule (1962)
  - People are not responsible for their criminal behavior if, because of their mental illness:
    - They could not recognize the inappropriateness of their behavior (like M'Naghten)

    OR
    - They could not control their behavior
- Diminished Capacity (1978)
  - A person with mental illness who commits a criminal offense may not, because of the illness, have criminal intent and therefore cannot be held responsible

- Insanity Defense Reform Act (1984)
  - A person should be found NGRI if as a result of mental disease or MR, he is unable to appreciate the wrongfulness of his conduct at the time of the offense
- Reactions to the Insanity Defense
  - There has been outrage against the insanity defense & calls for its abolition
  - But, the Insanity Defense is used rarely
    - The public overestimates how often it's used and how often the defense is successful
    - They underestimate the length of hospitalization of those who are acquitted

- Reactions to the Insanity Defense
  - Congress passed the Insanity Defense Reform Act in 1984
    - This made successful use of the insanity defense more difficult
    - It moved back toward M'Naghten–like definitions
  - Guilty but Mentally Ill
    - The consequences for GBMI are different than for NGRI
      - NGRI: People are not sent to prison but are evaluated
        - If found mentally ill, the person is sent to psychiatric facility until judged ready for release
      - GBMI: Much harsher
        - If found guilty, given a prison term

Assessing Competence to Stand Trial

- The person must
  - Understand the charges against them
  - Be able to assist in own defense
- State of mind during legal proceedings is separate from state of mind during the criminal act
- Being found incompetent usually results in involuntary commitment until competence is regained

Duty to Warn

- Tarasoff v. Regents of U. California (1974, 1976)
  - In 1969, Presenjit Poddar killed Tatiana Tarasoff
- Related cases have further defined the role of the therapist in warning others
  - The duty applies only when a client makes a **serious** threat of physical violence, when the client him/herself is planning to carry out this threat (and not another party), and when there is an **identifiable**, foreseeable victim
  - The threats must be **specific**
  - The therapist must warn the police and the intended victim, providing only that information which is necessary to ensure the safety of the intended victim

Mandated Reporting

- Duty to Warn is a legally mandated breach of confidentiality
- Confidentiality
  - Protects clients from any unauthorized disclosure of information given in confidence to a psychotherapist
    - Includes content of therapy and even the fact of the clinical relationship
    - A psychologist may lose his/her license for "willful, unauthorized communication of information received in professional confidence"
- Other legally mandated reporting
- Situations in which confidentiality **may** be breached

Mental Health Professionals functioning as Expert Witness

- Providing information about a person's dangerousness
  - In the mid-80's, researchers concluded that mental health practitioners had no expertise in the prediction of violence
  - But cutting edge research shows mental health practitioners can predict violence with some accuracy

Violence Risk Appraisal Guide
Marnie Rice

- Elementary school maladjustment
- Age at index offense*
- DSM personality disorder
- Separation from parents before age 16
- Failure on prior conditional release
- History of nonviolent offenses
- Never married

Violence Risk Appraisal Guide
Marnie Rice

- DSM schizophrenia*
- Victim injury in index offense*
- History of alcohol abuse
- Male victim in index offense

Violence Risk Appraisal Guide

- Psychopathy Checklist Score
  - Glibness/superficial charm
  - Grandiose sense of self–worth
  - Pathological lying
  - Conning/manipulative
  - Lack of remorse or guilt
  - Shallow affect
  - Callous/lack of empathy
  - Failure to accept responsibility

Violence Risk Appraisal Guide

- Psychopathy Checklist Score
  - Need for stimulation
  - Parasitic lifestyle
  - Poor behavioral controls
  - Early behavior problems
  - Lack of realistic long–term goals
  - Impulsivity
  - Irresponsibility
  - Juvenile delinquency
  - Revocation of conditional release
    - Criminal versatility
    - Promiscuous sexual behavior
    - Many short–term marital relationships

Violence Risk Appraisal Guide

- It does well for short–term & long–term prediction of violence; for very serious & less serious violence
- 2x as likely to be correct as incorrect
- Dose response
  - Those with the highest scores are more likely to commit their offense early

Mental Health Professionals functioning as Expert Witness

- Assigning a diagnosis
- Assessing competence
- Assessing Malingering
- Child Custody
- Disability & compensation judgments

- Patients Have the Right to
  - Treatment — Wyatt v. Stickney (1972)
    - In the Least Restrictive Alternative
    - As well as certain standards of care
  - Refuse Treatment
    - Argument over the use of antipsychotic medications is not yet completely resolved
      - Rennie v. Klein (1978)
    - Can people be forced to become competent to stand trial?
      - Riggins v. Nevada (1992)

- Research Participants Have the Right to
  - Be informed about the purpose of the research study
  - Privacy
  - Be treated with respect & dignity
  - Be protected from physical & mental harm
  - Choose to participate of to refuse to participate without prejudice or reprisals
  - Anonymity in the reporting of results
  - The safeguarding of their records (APA, 1992)
- Informed Consent re: risks & benefits

Clinical Practice Guidelines

- Agency for Health Care Policy & Research — 1989
  - Published Clinical Practice Guidelines for specific disorders
- APA Task Force Followed Suit in 1995
  - Clinical Efficacy axis (Internal validity)
    - Is the treatment effective when compared to an alternative treatment or to no treatment in a controlled clinical research context?
  - Clinical Utility axis (External validity)
    - Will an intervention with proven efficacy in a research setting also be effective in the various frontline clinical settings in which it will most frequently be applied? (Generalizability)
    - Is the application of the intervention in the settings where it is needed **feasible** & **cost effective**?

Changing Face of Mental Health Care

- More Scientifically Driven Treatments
- More Manualized Treatments
- Fewer Psychologists Providing Treatment
- Briefer Therapies & Cost Containment
- Fewer Hospitalizations
- Greater Use of Medications