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Mental Disability Law

Cases and Materials

Third Edition

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MLP: When I did the first edition of this casebook, my daughter, Julie, was a senior in high school, and my son, Alex, was in 9th grade. Julie is now a post-doc in developmental biology at Harvard Medical School; Alex is now a public defender with the Brooklyn Defender Service, working in Red Hook, Brooklyn. They—and my wife, Linda—remain the lights of my life. They bring me joy and laughter and happiness. Not a day goes by when I do not realize how lucky I am.

HEC: To my husband and daughter for their never ending love and support.

AJL: To my family, friends and colleagues: thank you for your support and love, and for your unwavering belief in the importance of these issues and the work we continue to do.
Contents

Table of Principal Cases xxix
Introduction to the Third Edition xxv

Chapter 1: Background
A. Approaching the Material 3
B. An Overview 3
   Adapted from Michael L. Perlin & Heather Ellis Cucolo, Mental Disability Law: Civil and Criminal 3
C. On Forensic Psychiatry 9
   1. Robert L. Sadoff, Practical Issues in Forensic Psychiatric Practice 9
D. Some Jurisprudential Considerations 18
   1. On Sanism 18
   2. On Pretextuality 22
   3. On Heuristics 26
   4. On False “Ordinary Common Sense” 27
   5. On Therapeutic Jurisprudence
      a. David Wexler, Therapeutic Jurisprudence: The Law as a Therapeutic Agent 28
      d. Bruce Winick, The Side Effects of Incompetency Labeling and the Implications for Mental Health Law 40
E. Other Recent Developments 46
   1. Mental Health Courts 46
      Adapted from Michael L. Perlin, “The Judge, He Cast His Robe Aside”: Mental Health Courts, Dignity and Due Process 46
Chapter 2 - Constitutional “Civil” Mental Health Law

A. Involuntary Civil Commitment

1. Introduction

2. Applying the Constitution
   a. Theodore Jackson v. State of Indiana
   b. J.B. O'Connor v. Kenneth Donaldson
      (1) The Impact of O'Connor
      Adapted from Michael L. Perlin & Heather Ellis Cucolo, Mental Disability Law: Civil and Criminal
      (2) Michael L. Perlin, Keri K. Gould & Deborah A. Dorfman, Therapeutic Jurisprudence and the Civil
          Rights of Institutionalized Mentally Disabled Persons: Hopeless Oxymoron or Path to Redemption?
      Albertu Lessard et al. v. Wilbur Schmidt et al.
      (1) Michael L. Perlin, Keri K. Gould & Deborah A. Dorfman, Therapeutic Jurisprudence and the Civil
          Rights of Institutionalized Mentally Disabled Persons: Hopeless Oxymoron or Path to Redemption?

3. On “Mental Illness”
   a. An Overview

4. Other Future Developments?
   a. Questions
7. Counsel and Experts
   a. Right to Counsel
      (1) Historical Background
      (2) The Meaning of Vitek
      (3) Note, On C.P.K.
   b. Voluntary Patients
      (1) Marlus C. Zinermon, et al. v. Darrell E. Burch
      (2) Susan Reed & Dan Lewis, The Negotiation of Volunteer Admission in Chicago, State Mental Hospitals
   c. Institutional Transfers
      (1) Joseph Vitek, et al. v. Larry D. Jones
      (2) The Meaning of Vitek
      (3) Note
   d. Intellectual Disabilities
      (1) Michael L. Perlin, Fatal Assumption: A Critical Evaluation of the Role of Counsel in Mental Disability Cases
      (2) Joshua Cosk, Good Lawyering and Bad Role Models: The Role of Respondent’s Counsel in a Civil Commitment Hearing
   e. Insanity Acquittees
      (1) Lyle R. Goetz v. The Honorable Matthew Crosson
      (2) Michael Jones v. United States
   f. Sex Offenders
      (1) Kansas v. Leroy Hendricks
      (2) Note on Seling v. Young, 531 U.S. 250 (2001)
      (3) Kansas v. Michael Crane
      (4) Note
      (5) On United States v. Comstock
         (a) Adapted from Michael L. Perlin & Heather Ellis Cucolo, Mental Disability Law: Civil and Criminal
      (4) Terry Foucha v. Louisiana
      (5) Bruce Winick, Ambiguities in the Legal Meaning and Significance of Mental Illness
      (6) Questions
   g. Outpatient Commitment
      (1) Note
      (2) Question
      (3) Kendra’s Law
         (a) Michael Perlin, Therapeutic Jurisprudence and Outpatient Commitment Law: Kendra’s Law as a Case Study
         (b) The Matter of K.L. case
      (6) Questions
   h. Other Commitments
      (1) Temporary Commitments
      (2) Emergency Commitments
      (3) Questions
The Role of Counsel

Michael L. Perlin & Deborah A. Dorfman, Is It More Than "Dodging Lions and Wastin' Time"? Adequacy of Counsel, Questions of Competence, and the Judicial Process in Individual Right to Refuse Treatment Cases

8. Other Modalities
   a. Statutory Approaches
   b. Questions and Other Treatments

9. Other Institutional Rights
   a. Due Process and Institutional Life
   b. Other Institutional Rights
   c. Sex
   d. Money

10. Questions
   a. Statutory Approaches
   b. Questions and Other Treatments
   c. After Dixon

11. The Development of a Newer Generation of Medications
    Michael Mossman, Unbuckling the "Chemical Straitjacket": The Legal Significance of Recent Advances in the Pharmacological Treatment of Psychosis

D. Other Institutional Rights
   1. Due Process and Institutional Life
   2. Other Institutional Rights
   3. Sex
   4. Money

E. Community Rights
   1. Is There a Substantive Right to Aftercare?
      a. Statutory Approaches
      (1) Catherine Lake v. Dale C. Cameron
      (2) William Dixon v. Caspar Weinberger
      (3) After Dixon

C. The Right to Refuse Treatment
   1. Historical Background — The Advent of Psychiatric Drugs
      Adapted from Michael L. Perlin & Heather Ellis Cuocolo, Mental Disability Law: Civil and Criminal
   2. Forerunners
      b. Gary Knecht et al., v. James N. Gillman et al.
      c. Allen Bodine v. Dr. Ingre Rudolph Plante, M.D.
   3. Rennie and Rogers
      b. John E. Rennie v. Ann Klein (Rennie II)
      c. John E. Rennie v. Ann Klein (Rennie III)
      d. Mark J. Mills et al. v. Rubie Rogers et al.
      e. The Rennie Remand
      f. John E. Rennie v. Ann Klein (Rennie IV)
      g. Rubie Rogers v. Commissioner of the Department of Mental Health
      h. Note: Further Developments in Rogers
   4. Post-Rennie and Rogers
      a. Note on State Constitutional Law
      b. Mark Rivers v. Stephen Katz
      c. Notes and questions
   5. A Therapeutic Jurisprudence Analysis
      Michael L. Perlin, Keri K. Gould & Deborah A. Dorfman, Therapeutic Jurisprudence and the Civil Rights of Institutionalized Mentally Disabled Persons: Hopeless Oxymoron or Path to Redemption?
   6. An Empirical Analysis
Chapter 1

A. Constitutional Approaches

(1) Terri Lee Halderman v. Pennhurst State School & Hospital

(2) Notes on Subsequent Developments in Pennhurst

(3) The Second Supreme Court Decision in Pennhurst

Adapted from Michael L. Perlin & Heather Ellis Cucolo, Mental Disability Law: Civil and Criminal

(4) Pennhurst, the Final Chapter (?)

(5) The Impact of Pennhurst

(6) Note

B. Other Federal Statutes

1. Section 504 of the Rehabilitation Act of 1973

2. The Fair Housing Amendments Act of 1988

3. The Developmental Disabilities Bill of Rights Act

4. Protection and Advocacy for Mentally Ill Individuals Act

C. Oregon Advocacy Center et al. v. Bobby Mink et al.

Chapter 4 - Civil Mental Health Law

A. Torts

1. Persons with Mental Disabilities as Plaintiffs

a. In the Commitment Process

(1) Becky S. Moore v. Wyoming Medical Center

(2) Fair Oaks Hospital v. Susan L. Pocrass

(3) Notes

(4) Question

b. Questions of Medication and Treatment

(1) Timothy Floyd Crites v. State of Iowa

(2) Note

c. Other Tort Issues

(1) Sexual Misconduct

Adapted from Michael L. Perlin & Heather Ellis Cucolo, Mental Disability Law: Civil and Criminal

(2) Suicide

Adapted from Michael L. Perlin & Heather Ellis Cucolo, Mental Disability Law: Civil and Criminal

(3) Note and Question

2. Persons with Mental Disabilities as Defendants

a. State Farm Fire & Casualty Co. v. James C. Wicka

b. Questions

3. Persons with Mental Disabilities as Third Parties

a. "Duty to Protect"

(1) Vitaly Tarasoff v. The Regents of the University of California et al.

Michael L. Perlin, Tarasoff and the Dilemma of the Dangerous Patient: New Directions for the 1990s

(2) Questions
## Contents

### Chapter 5 - The Criminal Trial Process

#### A. Competency

1. To Stand Trial
   - Background
     1. Bruce Winick, Restructuring Competency to Stand Trial
     2. Claudine Ausness, The Identification of Incompetent Defendants: Separating Those Unfit for Adversary Combat from Those Who Are Fit
     3. Bruce Winick & Terry DeMeo, Competence to Stand Trial in Florida
   - Questions

2. Substantive Rights
   - Milton R. Dusky v. United States of America
   - James Edward Drope v. Missouri
   - The Evaluation Process in "Real Life" Bruce Winick, Restructuring Competency to Stand Trial
   - Questions

3. Procedural Standards
   - Frank J. Pate v. Theodore Robinson
   - Burden of Proof
     1. Teofilo Medina, Jr. v. California
     2. Byron Keith Cooper v. Oklahoma
   - Questions

4. Role of Counsel
   - Introduction
     1. Adapted from Michael L. Perlin & Heather Ellis Cucolo, Mental Disability Law: Civil and Criminal
     2. James Earl Hill v. State of Nevada
     3. Tommy S. Groover v. State of Florida
   - Questions

5. Non-Psychiatric Disorders
   - Introduction

#### B. Other Competency Issues

1. To Plead Guilty/Waive Counsel
   - History
   - Salvador Godinez v. Richard Allan Moran
   - Note, After Godinez
   - Questions

2. Role of Counsel
   - Introduction
   1. Adapted from Michael L. Perlin & Heather Ellis Cucolo, Mental Disability Law: Civil and Criminal
   2. James Earl Hill v. State of Nevada
   3. Tommy S. Groover v. State of Florida
   4. Questions

3. Non-Psychiatric Disorders
   - Introduction
Table of Principal Cases

Cases are listed in alphabetical order by last name of plaintiff, or defendant where the state is the plaintiff.

Frank O'Neal Addington v. State of Texas, 441 U.S. 418 (1979), 156
Glen Burton Ake v. Oklahoma, 470 U.S. 68 (1985), 100
Gary Eldon Alford v. Louie L. Wainwright, 469 U.S. 956 (1984), 1020
Daryl Atkins v. Virginia, 536 U.S. 304 (2003), 1159
Thomas A. Barefoot v. W.J. Estelle, Jr., 463 U.S. 880 (1983), 1110
City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432 (1985), 647
Timothy Floyd Clites v. State of Iowa, 322 N.W.2d 917 (Iowa App. 1982), 748
Colorado v. Francis Barry Connelly, 479 U.S. 157 (1986), 806
Byron Keith Cooper v. Oklahoma, 317 U.S. 348 (1946), 842
United States of America v. Bridget M. Denny-Shaffer, 2 F.3d 999 (10th Cir. 1993), 1039
James Edward Drope v. Missouri, 420 U.S. 162 (1975), 807
State of Indiana v. Ahmad Ewards, 554 U.S. 164 (2008), 897
In the Matter of the Mental Health of K.C.F., 150 So. 3d 485 (2006), 329
State of Louisiana v. Wayne Robert Felde, 422 So.2d 370 (La. 1982), 1034
Terry Foucha v. Louisiana, 504 U.S. 71 (1992), 256
Virgie Foy and Reffie Foy v. Bradley Greenblatt, 190 Cal.Rptr. 159 (Rptr. 1989), 580
Lyle R. Goetz v. The Honorable Matthew Crosson, 967 F.2d 29 (2d Cir. 1992), 338
Tommy S. Groover v. State of Florida, 489 So.2d 15 (Fla. 1986), 852

Index
Introduction to the Third Edition

The first edition of *Mental Disability Law: Cases and Materials* was published in the spring of 1999 and the second edition in 2005. Over these years, the explosion of case law and legislation documented in those volumes has continued unabated. United States Supreme Court decisions have restructured the law as it applies, *inter alia*, to the relationship between the Americans with Disabilities Act (ADA) and institutionalized persons with mental disabilities (see *Olmstead v. L.C.*, pp. 700–716) and questions involving access to the courts (see *Tennessee v. Lane*, p. 724), to persons charged under Sexually Violent Predator Acts (SVPA) (see, e.g., *Kansas v. Crane*, p. 292), to persons with serious mental disabilities who wish to represent themselves at trial (see *Indiana v. Edwards*, pp. 897–904), to persons incompetent to stand trial who wish to resist the imposition of antipsychotic medication (see *Self v. United States*, pp. 906–915), to persons pleading the insanity defense in jurisdictions with narrow definitions of that term (see *Clark v. Arizona*, pp. 962–966), and to the relationship between mental disability and the death penalty (see *Atkins v. Virginia*, pp. 1159–1173, and *Hall v. Florida*, pp. 1173–1181). Further, dissatisfied with some Supreme Court decisions on the ADA, Congress responded by enacting the Americans with Disabilities Act Amendments of 2008, legislatively overruling some of the Court’s jurisprudence in that area of the law (see pp. 688–691).

Other courts have continued to fine-tune the law of involuntary civil commitment, of institutional rights (especially the right to refuse treatment in civil cases), of community care, and of all aspects of the criminal trial process. State legislatures have enacted—not without controversy—new sorts of outpatient commitment laws (now mostly known as AOT ("assisted outpatient treatment") acts), and state judiciaries have expanded—again, not without controversy—the role of “mental health courts,” a very specific sort of “problem-solving court” (drug courts and domestic violence courts are its forerunners). And, as in so many other areas of the law, litigators and advocates have begun—perhaps somewhat tardily—to look at questions of international human rights law in a mental disability law context. The bulk of newly-reported mental disability law litigation has come in three areas—SVPA cases, ADA cases, and criminal procedure cases—but virtually every area covered in the first and second editions of this casebook has seen unprecedented growth in the past sixteen years. It is also crucial that those who study mental disability law be familiar with other areas of the law that have significant application to
this specific area: international human rights law, the school of therapeutic jurisprudence and the application of new insights from the field of neuroscience.

Careful readers will note the use of the word "we" in this Introduction, as opposed to the word "I" that was used in the Introductions to the first two versions of this casebook. This is now a joint effort: besides the original editor (MLP), there are two additional ones this time around: New York Law School (NYLS) Adjunct Professor Heather Ellis Cucolo and Alison J. Lynch, a litigator with Disability Rights of New York. We have written multiple books and articles together in the past, and this was a logical next step for us to take. We believe that our multiple perspectives will be of great value to student readers as well. Also, since the publication of the second edition, MLP has retired from the full-time faculty at NYLS, and has created, along with HEC, a consulting company, Mental Disability Law and Policy Associates (MDLPA), where AJL is an instructor. MDLPA was developed to offer mental disability law and policy training to both domestic and international students, lawyers, and mental health professionals. The training offered covers a wide array of mental disability and criminal law topics and incorporates all of the subject areas discussed in this casebook.

We also wish to thank MLP's student assistants over the years, many of whom helped prepare some of the more recent law review articles that are excerpted here, and all of whom have helped me with the pocket parts to the treatise, Mental Disability Law: Civil and Criminal, which we draw on for many of the ideas incorporated here: Jenna Anderson, Jeannie Bliss, Marissa Costales, Betsy Fiedler, Jackie Halpern, Ryan Hild, Nikki Hirsch, Zev Holzman, Danielle Horowitz, Diana Moss, Naomi Schneidermill, Amanda Wichot, Megan Crespo, Mia Luna, Rachel Hider, Jessica Cohn, Mia Luna, Katherine Davies, and Kristina Drasher, we thank you all. We also want to thank colleagues whose thoughts and insights, help, encouragement and encouragement have meant so much over the years: Bob Sadoff, David Wexler, the late Bruce Winick, Joel Dvoskin, Doug Mossman, Debbie Dorfman, Pam Cohen, Henry Dlugacz, Steve Ellmann, Eric Rosenthal, Richard Sherwin, Eva Szeli, and Karen Owen Talley for their help and encouragement and inspiration. Finally, we wish to thank former NYLS Dean Rick Matasar and current Dean Anthony Crowell for their faith in us and their ongoing support. These words are not enough to reflect our appreciation.