

7-1-2009

## Confronting the Challenges of Persons Who Are Mentally Ill: A Judge's Perspective

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### Suggested Citation

Kathryn E. Zenoff, Confronting the Challenges of Persons Who Are Mentally Ill: A Judge's Perspective, 29 N. Ill. U. L. Rev. 477 (2009).

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# Foreword: Confronting the Challenges of Persons Who Are Mentally Ill: A Judge's Perspective

JUSTICE KATHRYN E. ZENOFF\*

In the last fifty years, persons with serious mental illnesses have gone from being institutionalized in psychiatric hospitals to being institutionalized in our county jails. The phenomenon has been called the “criminalization of the mentally ill” and has had adverse consequences both for our communities and for those persons with mental illnesses. When psychiatric hospitals closed in the 1960s and the community based mental health providers never received funding to support the move from institutional to community-based treatment, our jails and prisons saw a significant increase in persons with mental illness cycling in and out of their doors. Indeed, according to the Bureau of Justice Statistics, seven to sixteen percent of those incarcerated were diagnosed with a serious mental illness, as compared with a much lower percentage of those persons with mental illness in the general population.<sup>1</sup> The impact was significant. There was no treatment at all or only treatment that was woefully inadequate for those with mental illness. The criminal justice system saw an increase in arrests and in the number of cases that needed to be handled, straining an already overburdened system.<sup>2</sup> Costs rose for counties and states as police made repeated arrests and tax dollars went to pay for additional court functions and staff.<sup>3</sup>

The challenge for all aware of these problems was how to respond. As judges, we have the ability to use our authority and visibility in the community to convene stakeholders and to urge them to develop new collaborations and partnerships. Indeed, in June 2003, the Seventeenth Judicial Circuit Court and local mental health professionals felt that the time for talk had ended and a call for action was needed. On behalf of the circuit, I convened an eighty person Community Mental Health Task Force that met regularly for eighteen months. We documented the scope of the problem in our community and studied what steps and models other communities had

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1. Press Release, Bureau of Justice Statistics, More Than a Quarter Million Prison and Jail Inmates are Identified as Mentally Ill (July 11, 1999), *available at* <http://www.ojp.usdoj.gov/bjs/pub/press/mhtip.pr>.

2. *See generally id.*

3. Bureau of Justice Statistics, Direct Expenditure by Level of Government, 1982-2006, <http://www.ojp.usdoj.gov/bjs/glance/expgov.htm> (last visited Apr. 6, 2009).

adopted. The result was that in February 2005, the Therapeutic Intervention Program Court (TIP) opened in Winnebago County. The program accepted referrals of persons charged with both misdemeanors and nonviolent felonies that had been diagnosed with serious mental illnesses. Participation was voluntary. A multidisciplinary team was assembled to work with the defendants in the court. The task force also drafted protocols that were signed by the judiciary, the state's attorney, public defender, law enforcement officials, as well as corrections and court services, all coordinating their responses to persons with mental illness. The police and sheriff's deputies began crisis intervention training to enable them to more efficiently respond to emergency situations in the community to be able to avoid arrests where appropriate and to divert persons with mental illnesses to treatment. The TIP court can be described as an "invention," something new and uniquely adapted to the needs of Winnebago County. Certainly, it represents an innovative collaboration and partnership of stakeholders committed to a common goal and to leaving their individual and agency agendas behind. The common mission was, and is, to enhance and protect public safety while restoring liberty and community functioning of defendants with severe mental illnesses through comprehensive and therapeutic judicial intervention.

The Therapeutic Intervention Program Court has been operating for three years, with a team of professionals working together to provide case management, mental health, and probation services, as well as linkages to housing and other entitlements. Recent statistics show that thirty-one persons have graduated from the program, few re-arrests have occurred, and fewer hospitalizations have been required.<sup>4</sup> The impact of the program on the lives of the participants has been significant. At graduation, one person wrote:

My life has undergone a shift from the constant unwellness [sic] of most of the previous decade to a life worth living. This change occurred slowly, and in many different ways. The three main keys to my success, that truly got the ball rolling towards wellness, are the backbone of the court structure (TIP), my support system, and both mental and behavioral tools used to stay above my illness. The constant responsibility to appear before the judge, and meet with various [mental health case managers] were the essential first step.

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4. Criminal Justice/Mental Health Consensus Project, Spotlight on JMHCP: Winnebago County, Illinois, <http://consensusproject.org/updates/features/jmhcpIL> (last visited Apr. 6, 2009).

Another commented:

The whole TIP team has watched, helped and guided me through my recovery. . . . I would be deathly afraid to know where I would be or what sort of person I would've become if it wasn't for this program. Because of this program I feel like I finally have my life back.

While there have been a few ongoing studies around the country looking at various aspects of court operations of several of the now over 100 mental health courts,<sup>5</sup> we do not yet have the results. It is imperative that as we move forward with planning more mental health courts and jail diversion programs, we try to evaluate whether programs such as TIP have been "successful" and what "best practices" have been most effective. Of course, "success" can be measured in different ways. One way is to look at whether the quality of life of persons with mental illnesses has been improved in the sense that the court participants have taken increased responsibility for their own treatment and recovery. A second is whether the revolving door cycle has decreased, resulting in fewer visits to the jail and to hospitals and lower recidivism rates, resulting in increased public safety. Using these definitions and statistics kept by the program, TIP certainly has been "successful."

Part of TIP's success, in my view, has to do with the synergy of the presiding judge and the team, and the interaction of the team and the judge with the defendants. While I have been privileged to be on the bench since 1995 and to have handled many different assignments, I found my role as presiding judge in this specialized problem-solving court to be especially challenging and rewarding. Unlike judging in a regular criminal call, a judge in a mental health court must form a rapport or relationship with the participants themselves by using the knowledge of their mental illness and their criminal background (imparted by the team members) to inspire confidence and trust and to set realistic but firm expectations. The presiding judge in a mental health court must also use and balance incentives (such as being called earlier in the order of cases on status days or fewer court appearances being scheduled) and sanctions (such as sitting through an additional court call on another day or writing an essay). However, we must recognize that many defendants in the court do not just have a serious mental illness but also a co-occurring disorder, which complicates treatment and recovery.

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5. See, e.g., Bureau of Justice Assistance, Mental Health Courts Program, <http://www.ojp.usdoj.gov/BJA/grant/mentalhealth.html> (last visited Apr. 6, 2009).

Key to continued change and improvement in the response to persons with mental illness who become involved in the criminal justice system is the need for judges to serve as catalysts for change and transformation not only in our communities but at the state and national level. To that end, the GAINS Technical Assistance and Policy Analysis (TAPA) Center recognized this need several years ago and assisted in the formation of the national Judges' Leadership Initiative for Criminal Justice and Mental Health Issues (JLI) after a Bureau of Justice Conference in Los Angeles in 2004.<sup>6</sup> The resources and activities are open to any judge in the country. The JLI has worked with the Council of State Governments to develop several initiatives, including the publication of a *Judges' Guide to Mental Health Jargon*<sup>7</sup> in 2007 and the national Chief Justice Initiative, providing policy guidance and technical assistance to eleven states where the chief justice is spearheading the formation of statewide task forces to make system-wide improvements for persons with mental illnesses involved with the criminal justice system.

Illinois has been in the forefront of important initiatives as well. Several years ago, the Illinois Conference of Chief Judges formed a Specialty Courts Committee, which I chaired. We authored a comprehensive report on mental health courts and drug courts in 2006. The Illinois legislature passed one of the first statutes in the country authorizing the establishment of mental health courts, the Mental Health Court Treatment Act.<sup>8</sup> More recently, a number of judges in Illinois have collaborated with the Department of Human Services, Division of Mental Health with the assistance of Policy Research Associates, Inc. to map available resources and identify the gaps in services for persons with mental illnesses involved in the criminal justice system. We look forward to examining best practices and to developing a statewide strategic plan, as well as establishing a Center of Excellence for technical assistance and scholarship, which would be available to mental health and legal professionals.

In reflecting on my role as a judge and the work I have been privileged to perform in the area of mental health and the criminal law, I am reminded of the sage words of retired Chief Justice Mary Ann McMorrow to a group of new judges: "As judges, we look beyond the legal formalities of a particular dispute—to remain aware of the human dilemma that underlies al-

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6. See *JLI Holds National Meeting, Launches New Website*, CONSENSUS PROJECT NEWSLETTER (Criminal Justice/Mental Health Consensus Project), June 2006, available at <http://consensusproject.org/updates/newsletters/newsletters2006/June13Newsletter#JLI>.

7. JUDGES' CRIMINAL JUSTICE/MENTAL HEALTH LEADERSHIP INITIATIVE, JUDGES' GUIDE TO MENTAL HEALTH JARGON: A QUICK REFERENCE FOR JUSTICE SYSTEM PRACTITIONERS (2007).

8. Mental Health Court Treatment Act, 740 ILL. COMP. STAT. 168/1 to 168/35 (Supp. 2007).

most every case brought before us, and, always within the bounds of our authority, try to resolve the problems presented to us in a manner that satisfies both the legal and the human aspects of the case. Let us not forget that the law is first and foremost about human beings and their problems.” I know the *Northern Illinois University Law Review* Symposium will allow all of us—professionals in the legal field and in the mental health field—to share knowledge and perspectives to better meet the challenges affecting persons with mental illness.

