11 Psychol. Pub. Pol'y & L. 507

Psychology, Public Policy, and Law
December, 2005

Mental Health Courts
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Article
Foreword

A DIALOGUE ON MENTAL HEALTH COURTS

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In this Foreword, the co-guest editors of this symposium on mental health courts introduce the topic by defining the concept, describing the reasons for its inception, and noting the controversies it has provoked. It then summarizes the articles in the symposium. Finally, the editors, who disagree about the value, effectiveness, and consequences of this new model, air their differences in a dialogue designed to delineate the issues and educate the reader.

Keywords: mental health court, therapeutic jurisprudence, diversion, coercion, problem-solving courts

The first mental health court to receive national attention originated in 1997 in Broward County, Florida. The impetus for the development of the mental health court was pressure from a committee of local officials and advocates, including Chief Assistant Public Defender Howard Finkelstein, who were frustrated by the increasing number of people with mental illness who had been arrested for petty offenses and brought to jail, where they decompensated. There was no disagreement from judges, prosecutors, public defenders, and officials at the Broward County Jail that incarceration was especially inappropriate for people with mental illness. Mental health court was therefore developed by Judges Mark A. Speiser and Ginger Lerner-Wren as a means for diverting people from the criminal justice system to mental health treatment.

The basic assumption underlying the mental health court model is that, for at least some defendants charged with minor nonviolent offenses and, in some cases, even for those charged with felonies, the problem is more a product of mental illness than of criminality and that facilitating the offender's access to mental health treatment is a more effective response to the underlying problem than criminal conviction and sentence.

The efficacy of the mental health court model has not as yet been demonstrated empirically, although some anecdotal reports have suggested that it is a promising development. As a result of recent federal funding for mental health courts, application of the model has quickly expanded, and there are now reportedly at least 100 such courts in the United States.

Notwithstanding this rapid expansion, mental health courts have frequently ***508** been criticized. They are alleged to be coercive, ineffective when adequate services are not provided to offenders, and violative of due process. It has also been charged at times that their existence has encouraged police to arrest individuals who would not otherwise have been arrested. Moreover, it has been asserted that mental health courts can lead to further criminalization of those with mental illness, impose greater

stigma upon them, and result in a fragmentation of services, with those in the criminal justice system ironically receiving priority access to needed mental health services.

This new model therefore is controversial. As a result, it is a timely topic for a symposium issue of *Psychology, Public Policy, and Law* discussing its value and implications, as well as the research questions it raises. Thus, we are pleased to present this compilation of articles on the topic by leading scholars and practitioners in the field.

The symposium issue begins with an overview of the second generation of mental health courts by Alison D. Redlich, Henry J. Steadman, John Monahan, John Petrila, and Patricia A. Griffin (2005). They examine changes in the mental health court model as it has evolved over time, including the expansion to include defendants arrested for felonies and the transformation from a diversion program to one that sometimes requires a defendant to first plead guilty. They provide a useful overview of the development of the model of mental health courts across the country and articulate the research and evaluation questions raised by these new models. Because referring to mental health courts as a monolithic model is itself problematic, their article provides a useful template for assessing the significant differences among mental health courts.

Problem-solving courts generally have been hailed as effective means of rehabilitating offenders and reducing recidivism. Yet the research methodology used to evaluate these courts has often been inadequate. Focusing on mental health courts, Nancy Wolff and Wendy Pogorzelski (2005) of the Rutgers University Center for Mental Health Services and Criminal Justice Research explore the complex issues of how to evaluate these nonstandardized and often quite idiosyncratic interventions. In “Measuring the Effectiveness of Mental Health Courts: Challenges and Recommendations,” the authors conduct a highly useful analysis of the research challenges posed. Their analysis seeks to avoid the problems of the same evaluations of drug treatment court, which until recently often used research designs and methods that failed to meet scientific standards for reliability and validity. They examine in detail the major challenges for conducting scientifically rigorous mental health court evaluations, focusing on the inherently unstable nature of the intervention, the control condition, the subject sample, the intervention exposure protocol, and the period of observation. They conclude by offering a series of practical and conceptual recommendations on how to evaluate mental health courts.

Mental health courts have been subject to criticism from advocates for the rights of people with psychiatric disabilities and from many organizations of consumers of mental health services. These critique are summarized and expounded by Tammy Seltzer (2005), an attorney at the Judge David L. Bazelon Center for Mental Health Law. In “Mental Health Courts: A Misguided Attempt to Address the Criminal Justice System's Unfair Treatment of People With Mental Illnesses,” Seltzer explores the context in which mental health courts were ***509** developed, their place in the world of so-called specialty courts, and the legal and practical problems with mental health courts from the perspective of civil rights attorneys and many organizations of consumers of mental health services. Significantly, she describes current models that provide alternative solutions to the problems that mental health courts have been designed to address, models that operate without the disadvantages that she thinks are inherent in mental health courts.

From its inception until quite recently, the mental health court model has been restricted to misdemeanor cases involving nonviolent offenses. With the establishment of the Brooklyn Mental Health Court, however, the model has now been extended to felony cases. In “Building Trust and Managing Risk: A Look at a Felony Mental Health Court,” Carol Fisler (2005), the Director of Mental Health Court Programs for the Center for Court Innovation, describes the Brooklyn Mental Health Court and analyzes its innovative contributions. She describes the planning process participated in by a wide range of public and private organizations and individuals that led to the decision to establish a mental health court in Brooklyn, New York, that would focus mainly on felony cases. She also examines the processes used by the court, which, in 2 years of operation, has dealt with approximately 100 felony cases. The court is premised on the goal of linking offenders with mental illness to treatment as an alternative to incarceration, a premise that seeks to achieve both improved psychiatric stability for the offender and improved public safety. The court works with community mental health agencies, families, housing providers, and others to help the mentally ill offender lead a crime-free life in the community. The article describes in detail how the various participants in the

court process work together to evaluate offenders, provide treatment, and manage risk. It also describes the court's evaluation process and identifies issues for future research.

One of the crucial questions surrounding mental health courts--be they for felony or misdemeanor defendants--is whether a defendant with a serious psychiatric disability who elects to proceed in mental health court is making a voluntary, competent, and informed choice. In “Voluntary, but Knowing and Intelligent? Comprehension in Mental Health Courts,” Alison Redlich (2005) provides the framework for analysis of this issue, which is a threshold issue in analyzing the fairness and constitutionality of mental health courts. Despite the significance of this issue, the article raises troubling questions about the absence of research in this area and the relative indifference in practice to concerns relating to voluntariness and competence. The research that does exist suggests that this area may be particularly problematic, and Redlich does an outstanding job of summarizing the concerns underlying the issue.

We, the editors of this special theme issue on mental health courts, differ in our opinions concerning the wisdom of this new model. As colleagues on the faculty of the University of Miami School of Law, we both focused our scholarly attention on mental health law. One of us (Bruce J. Winick) remains in the academy, whereas the other (Susan Stefan) has resumed her prior professional life as a public interest lawyer working in the area of disability law. Winick, one of the cofounders of therapeutic jurisprudence (Wexler & Winick, 1991, 1996; Winick, 2005), is a proponent of mental health courts and of other emerging problem-solving court models that apply principles of therapeutic jurisprudence ***510** (Winick, 2003a, 2003b; Winick & Wexler, 2003). Stefan, who has spent her career championing the rights of people with psychiatric disabilities, has serious concerns about the mental health court model. Indeed, our difference of opinion is one factor that led us to coedit this symposium. Because mental health courts remain controversial, we thought that an exposition of our differing views on the topic would enhance the debate. We have not resolved our disagreements about the wisdom of this new model but have agreed to articulate our differences in this foreword. What follows is a dialogue between us. We hope that this dialogue enriches our readers' understanding of these issues and helps them to resolve for themselves questions about the value of this new model.

Question: Bruce, why do you favor mental health courts?

Answer by Bruce: Mental health courts are a pragmatic solution to the problem of untreated mental illness in the community. Some people with mental illness refuse to take their medication. Others lack the social or financial skills to obtain needed treatment. Without treatment, many decompensate and, as a result, get into trouble. Because civil commitment criteria have been tightened over the past 40 years (Winick, 2005), these individuals may not satisfy commitment standards. In many ways, their lack of treatment represents a failure of the community's mental health delivery and social service systems. In any case, without needed treatment, many commit minor offenses such as trespassing, urinating on private property, or wandering in traffic. Once brought to the attention of the police, many are arrested and transported to jail. Their problems are more a product of their mental illness than of criminality, yet they are arrested. Some commit more serious offenses and are charged with felonies, although most are arrested for being nuisances and are charged merely with petty offenses.

Many of these defendants do not really belong in the criminal justice system, and jail is the worst possible place for them. The jails lack adequate clinical resources and are often overcrowded, noisy institutions that are incredibly stressful. The problem that mental health court was developed to address is born of recognition that these people need treatment and do not belong in the criminal justice system. Mental health court is designed to divert them from the criminal justice system to the mental health treatment that they need.

Mental health court may not be the best way of providing needed services or of motivating people with mental illness to accept the treatment that they often refuse or cannot obtain otherwise. A humane society would make mental health treatment more widely available to all who want or need it and would provide better social services designed to help those in need to obtain treatment. Frequently, all this would require is needed referrals and help with transportation to appointments. Much of this is accomplished, in many of our communities, by what has become known as *assertive community treatment*, in which treatment is brought to the people in the community in roving vans, much the way a lending library brings books to the people rather

than requiring them to journey to the library building (Winick, 2003a). In some communities, police rather than courts play a diversion role. Under programs like the Memphis model, police are given training designed to acquaint them with the needs of people with mental illness and are encouraged to bring individuals presenting mental health problems who commit minor offenses to community mental health treatment centers, rather than to arrest them (Steadman et al., 1995; Winick, 2003a).

***511** I applaud these alternative models and think they ideally are more appropriate than mental health court. However, when these services are not provided or otherwise do not work and people whose main problem is untreated mental illness are arrested, I think that mental health court is a far better approach than processing these individuals through the criminal justice system. These courts can screen mentally ill defendants for risk of violence, seek to motivate those who are nonviolent to obtain needed treatment, and facilitate their securing the treatment they need. Given the assumed relationship between these individuals' mental illness and their criminal behavior, these courts, by motivating and assisting them to participate in treatment, also function to protect the community from future crime.

In short, mental health court is an alternative to the criminal justice system that many with mental illness may find more desirable than typical criminal processing of their minor (or even more serious) offenses. If I were designing an ideal service delivery system, I might not cast judges in this role. However, given the realities of our mental health service delivery system--in which social and medical problems that cannot otherwise be effectively dealt with tend to get dumped at the doorstep of the courthouse--I think that mental health court is a pragmatic solution that I favor over the alternative, the criminalization of mental health problems.

Question: Susan, why do you oppose mental health courts?

Answer by Susan: The creation of mental health courts to solve the problems represented by people with psychiatric disabilities in the criminal justice system is similar to an unhappy teenager deciding to have a child to solve her problems. The creation of mental health courts has historically reflected relatively impulsive decision making in the face of overwhelming and complex problems. Yet the very problems that brought the mental health courts into existence make it unlikely that they can succeed in their mission. Mental health courts may be conceived with the best of intentions, and a lucky few are blessed with dedicated and sensitive judges whose individual success should not necessarily lead to the conclusion that the underlying concept is a good idea. Generally, mental health courts are presented as a solution to a host of enormous, complex, structural problems, a mission not easily fulfilled, certainly not by them. Tammy Seltzer's (2005) article in this symposium points to a number of better and less troubling alternatives to address these problems. In the long run, mental health courts may simply compound the social problems that created them by allowing people to avoid facing those problems and by diverting resources from the successful solution of those problems.

Question: Susan, in your view, what is the problem that mental health courts are intended to solve?

Answer by Susan: The problem that mental health courts are intended to solve can be framed in a variety of ways: the inappropriate criminalization of behavior resulting from mental illness, the lack of access to adequate community mental health services, the prejudice of communities that call on police to rid them of people they find uncomfortable, the lack of training of police to deal with people with psychiatric disabilities, the flooding of the criminal justice system with people who have serious psychiatric disabilities. Some would contend that the problem mental health courts are intended to solve is simply that people with ***512** psychiatric disabilities don't take their medications as they should, with ensuing behavior resulting in criminal confinement that could and should be avoided.

Stating the problem in these larger structural terms avoids the fundamental and obvious issue. Mental health courts are considered a superior alternative to or substitute for regular courts because regular courts are recognized by all as being so ill equipped to handle low-income people with psychiatric disabilities that an entire alternative court system has to be created just for them.

When entire alternative systems are created, not from any demand by the people destined to be served or processed by them, but by those in power and when these systems are created explicitly to separate a marginalized and powerless minority from the branches of government that serve the public in general, there is every reason for deep suspicion and distrust. This practice has generally been called “segregation” in the past, and separate under these circumstances has never approached being equal.

Question: Susan, do you really think that mental health courts are an attempt to segregate, that is, discriminate against people with mental illness in the ways that, for example, Blacks were subjected to segregation in the Jim Crow era?

Answer by Susan: I don't think mental health courts spring from any hostility to people with psychiatric disabilities, but the U.S. Supreme Court has held that unnecessary segregation of people with psychiatric disabilities is illegal regardless of whether it is well intentioned (*Olmstead v. L.C.*, 1999). In 2004, the Court held that states could be sued when their courtrooms were inaccessible to people with disabilities (*Tennessee v. Lane*, 2004). The courtrooms weren't built with an intent to exclude disabled people, but they nevertheless were effectively closed to people in wheelchairs. Mental health courts were created with the specific intention of diverting mentally ill people from the public criminal justice courts: Everyone agrees to that. An inaccessible courtroom, however offensive, is less extreme than an entirely segregated criminal justice system with different judges, different (and fewer) procedural protections, and different practices.

There are traditionally two responses to the critique that mental health courts constitute segregation of people by reason of their psychiatric disability. The first is that the mental health court system is voluntary; the second is that mental health court (unlike, for example, schools in the segregated South) constitutes an improvement over the way that people with psychiatric disabilities are treated in the court system that serves the general public.

I have grave doubts about the voluntariness of the choices made from a holding cell in jail by people with obvious, manifest psychiatric disabilities about a process with which they are completely unfamiliar, but these will be discussed in detail later. The more serious problem is the idea that if the court system designed to serve the public indeed results in such adverse and disadvantageous treatment for people with disabilities, it is better to opt out of it altogether. This signals a profound and constitutionally troubling indictment of a judicial system created to serve and protect the rights of all citizens with equality and impartiality.

In the South, until recently (and perhaps still), the court system and the police system were actively, outrageously disadvantageous to African Americans. Murderers of Black children were acquitted, if they were brought to trial at all. No one ever thought that the solution to this problem was to create a separate court system, staffed by sympathetic White people, so that Black people could receive ***513** the justice they deserved. Although many of the problems facing Black defendants in the criminal justice system today are socioeconomic and may even in some cases be the result of racism, no one would consider a separate court system just for Black defendants, with White judges providing social services, as anything but patronizing and discriminatory. The obvious solution when a criminal justice system acts in discriminatory ways is to fix the criminal justice system and end the discrimination, not to create a separate system.

Furthermore, having a criminal court administer a social service system-- Judge Lerner-Wren in Broward County has control over various residential mental health placements and services--strikes me as imprudent, a violation of the separation of powers, and an avoidance of the problem of inadequate community mental health services.

The only situation in which segregated services should be even remotely considered is when they are clamored for by the group for which the services are provided. Few people have any doubts that the deaf community supports Gallaudet University, but deaf people do not clamor for a separate court system, even if it were to provide far better access to interpreters. Deaf people rightly want the public court system, theirs as much as anyone else's, to accommodate their deafness. Although organizations of current and former consumers of mental health services and ex-patients span the political spectrum, none support mental health courts.

Reply by Bruce: Whether organizations of ex-patients do or do not support mental health courts may not be the critical question. Individuals with mental illness whose behavior lands them in the criminal justice system have increasingly been voting with their feet to accept the diversion that mental health court offers. These individuals may choose to remain in criminal court or to accept diversion to mental health court. I agree that our criminal justice system, particularly in many of our states, has historically been (and, in some cases, continues to be) outrageously unfair to African Americans, but there is no similar legacy of discrimination against people with mental illness in our criminal justice system.

Reply by Susan: I deeply disagree with that statement. I think that even proponents would say that one of the reasons that mental health courts were created was because neither police on the street, nor employees in the jails, nor judges in the existing court system treated people with psychiatric disabilities with fairness or dignity. When Congress was considering the Americans With Disabilities Act, testimony regarding discriminatory practices by police against people with disabilities was so common that it was noted in the legislative history (H.R. Rep. No. 101-485, 1989, p. 50); when the Department of Justice didn't include specific regulations addressing police practices, the drafters of the regulations received numerous complaints. There have been literally hundreds of cases brought against prisons and jails for their treatment of people with psychiatric disabilities. In my practice, I have had numerous complaints from people about mistreatment, contempt, and misunderstanding exhibited by police, lawyers, jail employees, and judges. You're right that there is no “legacy” of discrimination, but that is because the discrimination is going on right now. The creation of a segregated court system--mental health courts--is an attempt to ameliorate its effects (but, until recently, only for people charged with misdemeanors).

Reply by Bruce: I agree that police have discriminated against those with ***514** mental disability and that jail and prison systems discriminate against them in the sense that they lack the treatment and other services needed by many with mental illness who are charged with crime. Also, I do agree that some judges have treated mentally ill defendants in disrespectful ways that violated their dignity. These discriminatory practices, which Michael Perlin (2000) has characterized as *sanism*, are deplorable, but certainly don't equate with the legal discrimination to which Blacks were subjected both before and after the Civil War. The law itself does not countenance discrimination against people in the criminal justice system because of their mental illness, as it did with regard to racial discrimination until 50 years ago, when the U.S. Supreme Court sought to put an end to it (*Brown v. Board of Education*, 1954).

The discriminatory abuses that people with mental illness are sometimes subjected to in the criminal justice process certainly need to be remedied. However, I don't think that mental health courts grew out of a desire to deal with this kind of discriminatory treatment. Although some proponents of mental health courts might have regarded this as an advantage that the model might produce, this wasn't the reason for the establishment of the model, and if it were, I would regard the establishment of a separate system of courts for those with mental disability to be a strange and highly objectionable way of remedying discrimination against those with mental illness.

I believe that mental health courts were developed to divert people with mental illness from the criminal justice system, not because they otherwise would be discriminated against or treated unfairly (compared with criminal defendants who are not mentally ill), but because many of them do not belong in the criminal justice system at all. They have been arrested because there has been probable cause to believe they have committed a criminal offense. They are free to contest their charges, but many have nothing to contest. They have violated the criminal law, but many of them don't belong in the criminal justice system because they are mentally ill and their behavior is more a product of their untreated illness than of their criminality. It's not that they, like Blacks in the South at an earlier time, are being discriminated against and treated unfairly on the basis of their race or some other inappropriate consideration. People who are not mentally ill who trespass, urinate on private property, or wander in traffic also would be arrested for their conduct. The criminal justice system is not singling out people with mental illness and arresting them for conduct that others would not be arrested for. Moreover, the courts are not treating them unfairly in the adjudication of their charges. The mental health court alternative simply offers some of them an option to resolve their criminal charges through accepting needed treatment, something that many would favor over trial, likely conviction, and punishment for their offenses. Those who would prefer routine criminal court processing can choose to remain in criminal court; those who would prefer diversion can opt for mental health court.

Reply by Susan: There are several problems with your argument. First, people with psychiatric disabilities are being arrested for offenses for which others would not be arrested. When I was a law professor, one of my students monitored mental health court as part of the Mental Health Law class. He recorded each of the allegedly criminal offenses for which people with psychiatric disabilities were being arrested. One person brought before Judge Lerner-Wren was arrested for ***515** drinking a cup of coffee in front of a bank. Presumably, the people at the bank didn't want someone with a psychiatric disability hanging around. I want to add that Judge Lerner-Wren did throw out that charge. Other charges included shoplifting a cigar or a pack of gum. Others, like trespass and public disturbance, were clearly discretionary calls on the part of the police. It seemed pretty obvious that many of these arrests were related to the person's psychiatric disability. I think police get called in because a community wants to remove certain people from its midst. That has happened with minorities of all kinds.

Second, if you think that people don't belong in the criminal justice system, then the existing system should throw out the charges. The appropriate social service system can then step in to provide mental health services. It is not the criminal justice system's function to provide social services. You may say (correctly) that the mental health system does not provide those services. Well, then, the mental health system needs to be fixed. The solution is not to graft its responsibilities onto the criminal justice system.

Reply by Bruce: To the extent that you are correct that people with mental illness are being arrested for conduct for which others would not be arrested, I agree that this would be unfair and inappropriate. I don't believe that this is a general practice, but to the extent that it is in some jurisdictions, it would amount to selective prosecution, which would constitute a ground for dismissal. To the extent it exists, this problem is not an artifact of mental health court, however, but would appear to be an inappropriate police practice that responds to community pressures to remove from the streets people with mental illness who act out in ways that are a nuisance to the community. The remedy for this is better police training designed to sensitize police officers to the problems of people with mental illness and how to deal with them through alternative means than arrest. Instead of arresting them, police should bring them to community mental health centers or connect them with assertive community treatment teams. Arrest is inappropriate for these individuals, but when it occurs, mental health court can function as a mechanism to remedy this abuse by attempting to remove them from the criminal justice system and to provide the treatment they need.

I would agree with you that, to the extent people with mental illness are being arrested for conduct for which others are not arrested, the charges should be thrown out and the social services system should then be alerted to their mental health, social, and housing needs. But when arrest is nondiscriminatory because the individual has committed an offense for which people without psychiatric disabilities also would be arrested, I think mental health courts can play an extremely useful role in removing from the criminal justice system those whose main problem is untreated mental illness. They need treatment, not jail and punishment, and if the mental health court can help them to obtain it, that is a good thing.

Reply by Susan: The court system was doing this for years before mental health courts came along and still does as long as the defendants don't fit into the stigmatized category of poverty plus mental illness. People charged with all sorts of crimes, from drunk driving to domestic abuse, engage in negotiations and plea bargaining with the state attorneys, agreeing to go to counseling in exchange for dismissal of the charges. Then they go to counseling, and the court doesn't get involved in this hybrid psychosocial rehabilitation/criminal justice model. I agree ***516** with the philosopher Michel Foucault that the intersection of psychology and the criminal law is an area that bears extremely close examination. I think it has the kind of potential for social control cloaked as social beneficence that should make us all a little wary.

Then there is the issue of whether the choice to accept diversion to mental health court is truly voluntary. This assumption is questionable for a number of reasons. The people don't go into the process understanding what mental health court is all about, and no one explains it to them in terms of benefits and drawbacks. Everyone in the system has a vested interest in these people accepting the mental health court alternative. The public defenders in Broward County, if Howard Finkelstein is any indication, support the mental health court, and my student reported that the attorneys appeared to consider themselves part of the mental health court treatment team--all very informal and oriented to the mental health needs of the client. This is not

an atmosphere that is conducive to knowing and intelligent decision making. There may be competence issues as well if the defendants are people with psychiatric problems that are manifest enough to be considered for mental health court. Because many do not receive medications that they need in jail, even those who want to take the medication, there may be competence concerns raised there as well.

Reply by Bruce: I agree that it is possible that mental health courts can be administered in ways that make them coercive. Although the decision whether to enter mental health court is legally a voluntary one, some defendants, facing a decision that they see as jail or treatment, may regard it as coercive. But facing hard choices such as this does not amount to coercion in a legal sense. Criminal defendants in plea bargaining may face such hard choices, as may sentenced offenders deciding whether to accept parole with conditions attached that may restrict their liberty. These may be hard choices, but the law does not regard them as coercive unless, of course, the offer made is unlawful or otherwise improper (Winick, 1997, 2003b).

Whether the decision amounts to coercion in a legal sense, however, is not the only question. The perception of coercion, even if the situation does not amount to legal coercion, may itself undermine treatment effectiveness (Winick, 2003b, 2005). It therefore is important that mental health court processes strive to avoid the perception of coercion.

An extensive literature on the psychology of procedural justice demonstrates that when people are treated fairly, with dignity and respect, and given a sense of voice and validation, it is less likely that they will subjectively experience feelings of coercion even when they are facing hard choices (Lidz et al., 1995; Monahan et al., 1995). As a result, judges and defense counsel in mental health courts should ensure that defendants receive dignity and respect, are given a sense of voice and validation, and are treated with fairness and good faith (Winick, 2003b; Winick & Wexler, 2003). Judges and defense lawyers, in dealing with mental health court defendants, should use positive forms of persuasion and avoid threats, force, and other negative forms of pressure. Mental health court judges are more likely to be aware of and to act in accordance with these principles derived from the psychology of procedural justice. Indeed, a recent study by Poythress, Petrila, McGaha, and Boothroyd (2002) of the Broward County, Florida, Mental Health Court found high levels of procedural justice and concluded that defendants do ***517** not perceive the way they are dealt with in mental health court as being as coercive as other types of criminal processing. To avoid the potential of coercion, mental health court judges and defense counsel should act so as to ensure that the defendant's decision to participate in mental health court is a voluntary one and is understood by the defendant as such.

Question: Bruce, are defendants in mental health court competent to make these decisions?

Answer by Bruce: Some defendants with mental illness may not possess the requisite competence, but many will. When the question of a defendant's competence to accept diversion and treatment is raised, an inquiry into competence may be necessary as a matter of due process. Counsel can play an important role in ensuring that the individual is sufficiently competent to make the decision to accept diversion, that he or she knows the consequences of accepting or rejecting such diversion, and that the decision is made voluntarily rather than through coercion. Counsel should do this not only to protect clients' legal rights and interests, but also because doing so will maximize the therapeutic potential of the mental health court diversion and thereby promote clients' psychological well-being (Winick, 2003b).

Question: Susan, are your criticisms of the mental health court model remediable, or are they inherent in the model?

Answer by Susan: I think the response to segregation is not to tweak it but to end it. The response to the gross injustices done to African Americans by police--for example, racial profiling--or in the courts is not to create a separate court system for African Americans but to bring justice to the existing system. If you are treating people unfairly in any system, the solution is not to exclude them from the system, but to change both the criminal justice system and the mental health system, however long and painful a process that may be. We are a long way from racial equality, but we don't think the solution is to return to segregation.

Question: Susan, what about the increasing use of mental health court for felony cases, as exemplified by the Brooklyn Mental Health Court? Individuals with mental illness who are charged with felony offenses are not being discriminated against. Their

offenses are more serious, but in my view, many would still benefit from mental health court rather than being left in the criminal justice system. Would you also oppose mental health court for felony cases?

Answer by Susan: Theoretically, the mental health court principle that you cite--that people who commit crimes because of mental illness should be in treatment rather than in prison--would embrace all crimes, and it would certainly benefit people with mental illness most when the crimes were most serious and the criminal penalty was highest. Regardless of the new felony mental health courts, I have yet to see a mental health court for any of the most serious criminal acts, no matter how clearly symptomatic the perpetrator was at the time of the crime. Rather, mental health courts are simply another way to force nondangerous people with mental illness into treatment, and the period of treatment is usually much longer than the jail time (if any) would have been. If society was serious about the premises underlying mental health courts, there would be mental health courts for capital offenses, for rape, for other serious crimes against the person. But there aren't now, and you won't see any in the future.

Reply by Bruce: I don't think that all people who commit crimes because of ***518** mental illness should be in treatment rather than in prison. I think this is true for many who commit what I have characterized as minor nuisance offenses. Few of them belong in jail or prison, and many would benefit from treatment. Some with mental illness who commit more serious crimes also could be diverted to treatment consistent with the need to protect community safety, but many pose a continued danger to the community, and many deserve punishment for their offenses even though they are mentally ill. The insanity defense serves as a safety valve here, excusing from criminal responsibility and punishment those whose mental illness is so serious that it prevents them from understanding the wrong-fulness of their conduct and, in some jurisdictions, from controlling their actions. But few mentally ill criminal offenders will satisfy this stringent standard, and for those who do not, it is appropriate and even therapeutic to hold them responsible for their conduct. If prison is deemed an appropriate punishment for them, it certainly should offer clinical services designed to meet their treatment needs.

The difficult problem faced by felony mental health court is how to separate those who should be diverted to treatment from those who deserve punishment and from whom the community needs protection. Felony mental health court does not necessarily result in a dismissal of charges. The Brooklyn Mental Health Court, for example, often will leave the defendant with a misdemeanor conviction even if the felony charges are dismissed. Protecting community safety is an important goal of the felony mental health court, and as the article in the symposium by Carol Fisler (2005) shows, the Brooklyn Felony Mental Health Court does a careful job of screening out defendants who pose a danger to the community. No one asserts that people who commit serious felonies like murder or rape should be diverted from the criminal justice system. But felony mental health court can be an effective means, like drug treatment court is in a related context, to secure needed help without compromising community safety, at least for some mentally ill offenders charged with felonies.

Question: Bruce, do you have any reservations about mental health courts?

Answer by Bruce: Yes, I do. There is a risk that mental health courts, if they are seen as an effective means of facilitating the treatment of people in the communities who cause problems as a result of their untreated mental illness, may prompt the police to begin arresting people with mental illness for offenses for which they would not previously have been arrested. In other words, a successful mental health court could have the effect of altering police arrest practices in the community aimed at dealing with people with untreated mental illness who may cause trouble. I would strongly object to such a widening of the social net, leading to further criminalization of those with mental illness. There is, however, no evidence that mental health courts have been used in this way, producing the arrest of people for petty offenses who otherwise would not have been arrested.

It would be a serious mistake to use mental health courts in this way. There are much better ways of getting needed treatment to those with mental illness than through the stigmatizing and unpleasant means of arrest. Many police receive no training in how to deal with people with mental illness. Such training should be widely available, and police should be encouraged not to arrest people with mental illness who commit petty nuisance offenses, but to divert them from jail by bringing them to appropriate community treatment facilities or linking them up to an assertive community treatment team.

***519** Mental health courts should be used only to divert those with mental illness who are arrested for offenses for which they would have been arrested anyway. Otherwise, they could produce unnecessary criminalization and stigmatization of those with mental illness. Although it is good to divert people with mental illness from the criminal justice system, it is far better to divert them through alternative means that can avoid the criminal justice system altogether. Police arrest practices therefore should not change in response to mental health courts. If anything, police should be encouraged to make lesser use of arrest and rely on other forms of diversion.

Question: Bruce, do you have any other concerns?

Answer by Bruce: I am also concerned about the risk that mental health courts could lead to a fragmentation in the service delivery system. This problem, however, can be avoided. The level of services in the community should be increased generally, and all who voluntarily seek mental health services should have easy access to them. Given the serious social problems that untreated mental illness can produce, appropriate mental health services should be available on demand for all who desire them, and outreach services, including assertive community treatment, should be increased to reach out to all who are in need of such services. We should have more of a preventative approach designed to avoid the necessity of hospitalization or arrest. If these needed services are provided, mental health courts will not result in affording those in the criminal justice system a superior access to needed services.

Question: Susan, we both have opposed the emerging legal model of preventive outpatient treatment (Stefan, 1987; Winick, 2003a). We both have questioned the constitutionality of this model and have criticized it as unnecessary and inappropriate coercion. Don't you think that mental health courts are a better alternative than preventive outpatient commitment and that if mental health courts were abolished, there would be more pressure for states to enact outpatient commitment statutes?

Answer by Susan: I think mental health courts are outpatient commitment by another name, with perhaps more enforcement potential than regular outpatient commitment because there is a criminal charge hanging over the individual, even if it is only trespass or shoplifting a cigar. As a practical matter, outpatient commitment has been shown to be feebly enforced because overworked mental health professionals have better things to do with their time than chase after truant patients. This is true even in North Carolina, where outpatient commitment first began, so it is relatively less of a threat on the ground than mental health courts, where judges have an enforcement mechanism at their fingertips--the police serving bench warrants--with which they are familiar and comfortable. In addition, outpatient commitment statutes often don't have any teeth if the person actually refuses to comply. Mental health courts have real threats of jail time to enforce their demands that the individual take his medication, or obey curfew, or whatever rules the judge has imposed.

Reply by Bruce: You equate mental health courts with preventive outpatient commitment and indeed suggest that they may be even more coercive. Yet outpatient commitment involves court-imposed treatment that the individual has refused to accept on a voluntary basis. By contrast, participation in mental health court is voluntary. If the judge and defense attorney play their roles appropriately, ***520** as I have suggested they should, the defendant will be given an informed and voluntary choice concerning whether to participate or to opt for routine criminal court processing. Although this may be a hard choice, it doesn't amount to coercion.

Preventive outpatient commitment, on the other hand, is legal coercion that is imposed over the individual's objection. It represents a widening of the social net because the individual involved does not otherwise satisfy civil commitment criteria. In the absence of a preventive outpatient statute, the individual would not be legally compelled to accept treatment. Mental health court, at least when it does not produce the arrest of people who would not otherwise be arrested, which I have suggested would be inappropriate, does not widen the social net. Rather, it provides a defendant who has committed a criminal act a new option to accept diversion from the criminal process if he or she is willing to accept needed treatment.

I therefore think that mental health courts are a superior alternative to preventive outpatient commitment (Winick, 2003a, 2005). Moreover, because, when applied correctly, they involve voluntary choice on the part of the individual to accept treatment, they are more likely to produce positive therapeutic outcomes (Winick, 2003a, 2005). Preventive outpatient commitment, because it involves coercion, is less likely to be therapeutic and may even produce a form of psychological reactance that may undermine treatment compliance and effectiveness (Brehm & Brehm, 1981; Winick, 2005).

Response by Susan: At least we agree on opposing preventive outpatient commitment. I don't necessarily think mental health courts are more coercive than preventive outpatient commitment, just likely to be more effective at being coercive. And I think your support of mental health courts depends on a lot of "ifs"--if applied correctly, if the judge and the defense attorney play their roles, if people are not arrested essentially because they are symptomatic and making the community uncomfortable, if the process is truly voluntary (Redlich, 2005). As all the contributors to this themed issue say, we need more research about how these courts actually operate on the ground.

Reply by Bruce: Yes, my support of mental health courts does depend on all of these "ifs," and I do acknowledge that if these conditions are not satisfied in practice, I would be critical. In my view, the correct response should be to educate these courts and the defense lawyers and others who work within them concerning the importance of satisfying these conditions. This calls for reforms in courts that don't satisfy them but not for throwing out the model altogether.

Question: Bruce, mental health courts seem to vary quite a bit. What features do you think every mental health court should have?

Answer by Bruce: Although the mental health court model is applied somewhat differently in differing jurisdictions, these courts all share (or should share) certain commonalities. They all involve a team approach in which court personnel and treatment providers assist the judge in the process of screening offenders to determine their appropriateness for mental health court. This typically includes whether the offenders have mental illness, whether they need treatment, and whether they would present a risk of violence if released to the community. The team helps to devise an appropriate treatment plan and to supervise and monitor ***521** the individual offender's performance and treatment. The mental health court judge is a member of this treatment team.

An essential part of the judge's role is to attempt to motivate the individual to accept needed treatment. The team formulates an appropriate treatment plan, and court personnel, typically including a case manager and monitor, follow the individual's participation in the treatment program and submit periodic reports to the judge. The individual enters into a behavioral contract with the court in which he or she agrees to participate in treatment and to report periodically to the court so that the court can monitor treatment compliance. The judge-participant interaction at these periodic hearings is an essential component of the court process. The individual is encouraged to discuss his or her experiences and problems in treatment. The hearing becomes an exercise in creative problem solving in which the judge and other members of the treatment team attempt to resolve difficulties and overcome obstacles that have arisen in the treatment process.

The hearing typically occurs in the presence of other mental health court participants, all of whom are scheduled for a common report date. As a result, not only does the individual whose case is being discussed benefit from the court process but so do the other mental health court participants who are present and who may be experiencing similar problems. The judge at these hearings often functions to help shape the individual's behavior by praising treatment compliance or sanctioning those who miss appointments or otherwise fail to comply with the treatment program. The behavioral contract that the individual enters into with the court typically specifies the details of required participation and the sanctions that will be applied for noncompliance. Other mental health court participants observing the individual's interaction with the judge experience a measure of vicarious reinforcement.

At the completion of a sufficient course of treatment in which the individual has achieved the goal specified in the behavioral contract and has demonstrated consistent performance and responsibility, the mental health court judge will dismiss the individual's charges. In some jurisdictions, a guilty plea is required as a condition for participation in mental health court. In

such cases, adjudication is typically withheld until successful completion of the mental health court process, at which point the charges are dismissed. In other jurisdictions, the charges remain unresolved during the mental health court process, and charges are later dismissed if the individual's performance is satisfactory. In some jurisdictions, the prosecutor agrees to a deferred prosecution or deferred sentence to allow participation by the individual in mental health court.

All mental health courts represent a multiagency and systemwide response to the problem of untreated mental illness. The process is designed to motivate the individual to accept needed mental health treatment and to encourage and monitor treatment compliance. The judge and members of the treatment team often play a social work function in linking the individual to treatment resources and facilitating their utilization and the individual's ongoing participation. Once the individual has agreed to accept diversion to mental health court, the defense attorney and prosecutor typically function to help motivate the individual to accept and to comply with treatment. To play their roles effectively, the judge and attorneys need enhanced interpersonal skills and an appreciation that they are functioning as therapeutic agents (Winick, 2003b; Winick & Wexler, 2003).

***522** *Question:* Bruce, aren't judges in mental health court being asked to play the role of social workers, and if so, do they possess the skills needed to play this role?

Answer by Bruce: In many ways, mental health court judges are functioning as social workers. Mental health courts are merely one type of specialized court that can be seen as problem-solving courts, as they increasingly are known (Winick & Wexler, 2003). These include drug treatment courts, domestic violence courts, community courts, teen or youth courts, and reentry courts, among others. These are specialized tribunals designed to help people solve their problems and to motivate them to accept various forms of rehabilitation or treatment (see Winick & Wexler, 2003). These courts apply principles of therapeutic jurisprudence to help to achieve the psychological well-being of those who appear before them.

Are the judges cast into these new roles always competent to perform them? Many are, but many are not. Courts playing these new roles--dealing with such intractable problems as substance abuse, domestic violence, child abuse and neglect, juvenile delinquency, and mental illness--are in many ways functioning as social workers. In many respects, these new courts can be seen as psychosocial agencies. Judges may not be the best professionals to play these roles, but they frequently are confronted with these problems because our society fails adequately to deal with them and they therefore wind up in the courts.

Judges in these courts (as in mental health courts) are part of an interdisciplinary team that involves court social workers and community treatment agencies all working together to attempt to achieve a rehabilitative or therapeutic outcome for those individuals who become court involved, often on a recycling basis. We need to provide more training in the approaches and techniques of psychology and social work for these judges. They themselves are not clinicians, but they are behavior-change agents, and they need to understand many of the techniques of psychology and social work in order to play their roles effectively. They need to enhance their interpersonal skills, to understand the psychology of procedural justice, and to understand techniques of motivation and compliance assurance. I regard this as a challenge for judges playing these roles, not an insurmountable obstacle to their effective performance. Indeed, an emerging literature deals with these issues and seeks to teach judges how to play these new roles (Winick, 2003b; Winick & Wexler, 2003).

Question: Susan, how do you think mental health courts, if we are to have them, can be improved?

Answer by Susan: I can't respond to the question framed that way. The statement that Bruce made that judges are part of an interdisciplinary team fills me with horror, to be honest. Protection of rights and administration of justice are not matters for social workers or interdisciplinary teams. Judges need to focus on people's rights, not their best interests. The criminal justice system can be improved by police refusing to accede to requests to arrest people when those requests clearly arise from a desire to remove someone from a community setting, by jail systems not taking away the medications that people need, by public defenders receiving training and education in representation of people with psychiatric disabilities, and by appropriate discipline of those attorneys and judges who mock people with psychiatric disabilities or treat them with contempt.

Reply by Bruce: I agree that judges need to focus on people's rights, but I ***523** don't think that also being concerned with their best interests is inappropriate. When defendants elect to contest their charges, the judge should play the traditional role of being an impartial adjudicator, fully respecting their constitutional rights. When they instead opt for diversion to mental health court or drug treatment court or some other problem-solving court, the judge is not functioning as an adjudicator of contested charges. Instead, the judge is playing a role as a member of a treatment team designed to assist the individual to deal with a mental health, substance abuse, or other psychosocial problem that he or she has decided it would be preferable to confront instead of pleading not guilty to the criminal charges and facing trial, or pleading guilty to them and accepting punishment. For some defendants with these kinds of problems, a criminal charge can serve as a wake-up call that makes them confront their problems. If so and if they wish to deal with them, we should offer them a variety of diversion opportunities. The criminal justice system has long offered diversion to criminal defendants through pretrial intervention programs in which the individual is offered mental health or drug treatment and the prosecutor is willing to defer prosecution, *nolo pros* the charges, or consent to a withholding of adjudication conditioned on the defendant's successful completion of the treatment program (LaFave & Israel, 1985, p. 217; “Note, Pretrial Diversion From the Criminal Process,” 1974). Mental health courts and drug treatment courts are merely an extension of these traditional diversion programs and, in my opinion, a potentially far more effective form of diversion precisely because the judge plays a role in the treatment and monitoring process rather than leaving the task exclusively to community treatment agencies.

When we have established such problem-solving courts, to improve their functioning, as mentioned earlier, we need to provide judges with more training in how to play their new therapeutic roles in these courts. We need to make judges understand that they should not act paternalistically in playing these roles but rather should give individuals a full measure of choice in whether to accept or reject diversion to mental health court (Winick, 2003b). Individuals charged in criminal court have a fundamental constitutional right to deny their charges, to insist on a fair trial, and to mount a defense, if they wish to do so. Judges must respect the right of mentally ill defendants to do so even if the judges believe that the defendants should accept diversion to mental health court instead. For those who accept diversion, judges should seek to ensure that the defendant's decision is a voluntary and competent one. In many respects, assuring voluntariness and competence is the primary role of defense counsel. Defense lawyers should adequately counsel their clients about the advantages and disadvantages of accepting diversion to mental health court. Many defendants accepting such diversion who fail to comply with their behavioral contract with mental health court will be penalized. In jurisdictions that require a guilty plea as a condition for mental health court involvement, defendants who fail to comply may receive a revocation of probation or a serious prison sentence. Defendants should be fully aware of these consequences, and it is the primary responsibility of defense counsel to ensure that their decisions are knowing and informed, as well as voluntary.

The problem of avoiding coercion in the defendant's decision whether to accept mental health court can be significantly diminished if the judge and defense lawyer play their roles in these ways. Moreover, it is crucial that both the judge ***524** and defense lawyer treat the defendant with dignity and respect, demonstrate to the defendant their good faith, and accord the defendant a sense of voice and validation. If they act in this way, the likelihood that the defendant will experience feelings of coercion will be substantially reduced. This is important not only in increasing the defendant's sense of satisfaction with mental health court, but also in increasing treatment compliance (Redlich, 2005; Winick, 2003b).

A defendant agreeing to accept needed treatment in mental health court frequently will be asked to enter into a written behavioral contract with the court. The defendant should participate in the negotiation of the terms of this agreement. If the defendant can come to see this agreement as an undertaking that he or she is voluntarily making not only for reasons that relate to the extrinsic motivation that avoiding criminal charges can bring, but also because he or she sees the instrumental value for himself or herself of engaging in treatment. This will significantly increase the likelihood of a positive treatment outcome (Winick, 2003b). The hope is to spark a measure of intrinsic motivation on the part of the individual to comply with treatment, and if properly done, the behavioral contracting that occurs in mental health court (either explicitly or implicitly), as well as the defendant's dialogue with counsel and the judge, can succeed in establishing such motivation for treatment and the commitment needed to carry it out successfully (Winick, 2003b).

To function effectively in this context, both the judge and the defense attorney therefore must have enhanced interpersonal skills, must eschew paternalism, must treat the individual with dignity and respect, must heed the lessons of procedural justice, and must understand the psychological dimensions of such techniques as behavioral contracting and motivational interviewing (Winick, 2003b). When the judge, lawyers, court personnel, and the treatment providers they work with learn to function in these ways, they can establish in the mental health court a supportive culture that can meaningfully facilitate the defendant's restoration to mental health. The arrest and court involvement can function as a real catalyst for change, as a therapeutic opportunity for the individual. But the individual must himself or herself see the need for change. The judge, lawyers, and treatment team can facilitate this process, but for it to work, the individual must take primary responsibility for solving his or her own problems (Winick & Wexler, 2003). When it works well, a real therapeutic alliance can be forged within the courtroom, one that can provide a significant measure of help for those who wish to accept it. This is the real promise of mental health court. When it can fulfill this promise, mental health court can constitute therapeutic jurisprudence in action.

Reply by Susan: The courtroom is no place for a therapeutic alliance to be forged. A judge sensitive to the truth that all people are equal before the law will treat people with dignity and respect without having to have training in or understanding of psychological principles. I support diversion programs for people with mental health problems from the criminal court system, but I do not support creating a separate court system for people already excluded and stigmatized in society. I think the place where both of us have absolute consensus is that the criminal justice system has been flooded with people with serious psychiatric disabilities and that for many of these people, serving time in jail is costly, cruel, unjust, and wasteful. We both share concern and frustration at this undeniable reality, and I hope that policymakers who address the problem bring the openmindedness ***525** and civility to their disagreements that Bruce and I have always done. Finally, I hope that this exchange has been as useful and interesting for the reader as it has been for us.

References

Brehm, S. S., & Brehm, J. W. (1981). *Psychological reactance: A theory of freedom and control*. New York: Academic Press.

Brown v. Board of Education, 347 U.S. 483 (1954).

Fisler, C. (2005). Building trust and managing risk: A look at a felony mental health court. *Psychology, Public Policy, and Law, 11,* 587-604.

H.R. Rep. No. 101-485 (1989).

LaFave, W. R., & Israel, J. H. (1985). *Criminal procedure*. St. Paul, MN: West Publishing Company.

Lidz, C., Hoge, S., Gardner, W., Bennett, N., Monahan, J., Mulvey, E., & Roth, L. (1995). Perceived coercion in mental hospital admission: Pressures and processes. *Archives of General Psychiatry, 52,* 1034-1039.

Monahan, J., Hoge, S., Lidz, C., Roth, L., Bennett, N., Gardner, W., & Mulvey, E. (1995). Coercion and commitment: Understanding involuntary mental hospital admission. *International Journal of Law and Psychiatry, 18,* 249-263.

Note, Pretrial diversion from the criminal process. (1974). *Yale Law Journal, 83,* 827-854.

Olmstead v. L.C., 527 U.S. 581 (1999).

Perlin, M. L. (2000). *The hidden prejudice: Mental disability on trial*. Washington, DC: American Psychological Association.

Poythress, N., Petrila, J., McGaha, A., & Boothroyd, R. (2002). Perceived coercion and procedural justice in the Broward County mental health court. *International Journal of Law and Psychiatry, 25,* 517-533.

Redlich, A. D. (2005). Voluntary, but knowing and intelligent? Comprehension in mental health courts. *Psychology, Public Policy, and Law, 11,* 605-619.

Redlich, A. D., Steadman, H. J., Monahan, J., Petrila, J., & Griffin, P. A. (2005). The second generation of mental health courts. *Psychology, Public Policy, and Law, 11,* 527-538.

Seltzer, T. (2005). Mental health courts: A misguided attempt to address the criminal justice system's unfair treatment of people with mental illnesses. *Psychology, Public Policy, and Law, 11,* 570-586.

Steadman, H. J., Morris, S. M., & Dennis, D. L. (1995). The diversion of mentally ill persons from jails to community-based services: A profile of programs. *American Journal of Public Health, 85,* 1630-1710.

Stefan, S. (1987). Preventive commitment: The concept and its pitfalls. *Mental and Physical Disability Law Reporter, 11,* 288-302.

Tennessee v. Lane, 541. U.S. 509 (2004).

Wexler, D. B., & Winick, B. J. (1991). *Essays in therapeutic jurisprudence*. Durham, NC: Carolina Academic Press.

Wexler, D. B., & Winick, B. J. (Eds.). (1996). *Law in a therapeutic key: Developments in therapeutic jurisprudence*. Durham, NC: Carolina Academic Press.

Winick, B. J. (1997). Coercion and mental health treatment. *Denver University Law Review, 74,* 1145-1168.

Winick, B. J. (2003a). Outpatient commitment: A therapeutic jurisprudence analysis. *Psychology, Public Policy, and Law, 9,* 107-144.

Winick, B. J. (2003b). Therapeutic jurisprudence and problem solving courts. *Fordham Urban Law Journal, 30,* 1055-1090.

***526** Winick, B. J. (2005). *Civil commitment: A therapeutic jurisprudence model*. Durham, NC: Carolina Academic Press.

Winick, B. J., & Wexler, D. B. (Eds.). (2003). *Judging in a therapeutic key: Therapeutic jurisprudence and the courts*. Durham, NC: Carolina Academic Press.

Wolff, N., & Pogorzelski, W. (2005). Measuring the effectiveness of mental health courts: Challenges and recommendations. *Psychology, Public Policy, and Law, 11,* 539-569.

Footnotes

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