The Public Defender's Role in Meeting Client Mental Health Needs

Presented April 15, 2004
by Linda McLaughlin
Director of Social Services
Knox County Public Defender's Office

"Reentry to Recovery:
People with Mental Illness Coming Home from Prison or Jail"
a conference sponsored by
Center for Mental Health Services and
Criminal Justice Research
April 14 – 16
Philadelphia, PA

I. Introduction

Criminal justice professionals are all too familiar with the growing number of people with mental illness in the criminal justice system. Nationally, according to the Bureau of Justice Statistics, 16 % of all inmates self-reported current mental illness or an overnight stay in a mental hospital.[i] In Knox County, Tennessee, where I direct Social Services at the Knox County Public Defender's Community Law Office (CLO), statistics concerning mental health and criminal justice are comparable. Eighteen percent of the people in Tennessee's county jails have mental illness, a rate three times that of the general population where five percent of the population is mentally ill.[ii] A 2003 jail survey indicated there are more than twice as many individuals with serious mental illness housed in the county jails of Tennessee than are hospitalized in the state mental health institutes. These statistics are not surprising considering the state's funding and resource priorities. The number of state psychiatric beds decreased from approximately 7,500 in the 1970's to 1,161 in 2001, an 85% cut in treatment capacity.[iii] At the end of 2003 there were 19,120 people in Tennessee prisons. Tennessee's Department of Corrections received appropriations of $540,773,000 for the upcoming fiscal year, a 13% *increase* in the 2002/2003 expenditure of $475,734,600. Meanwhile, Tennessee's Department of Mental Health has a budget of $209,279,000 for the upcoming fiscal year, a slight *reduction* from the 2002/2003 expenditure of $216,786,700.

Everyday these numbers translate into real consequences for real people – our clients. Their experiences prompted my public defender office to focus on our role in making the criminal justice system more responsive to the needs of people with mental illness. The CLO has joined several collaborative efforts to assist individuals, families and the community with battling mental illness. These activities have already produced positive changes in our clients and in community perceptions of these individuals. After two years of data collection a preliminary study of a representative random sample of the CLO clients who received social services assistance between July 2001 and December 2003 shows that 37% had repeat contact within the Knox County justice system. In contrast, there is a 60-80% recidivism rate for those who do not receive counseling and treatment. While these data are preliminary, they are encouraging.

This paper explores three areas:

- How our agency re-invented itself to better serve our clients and the Knox County community;
- How we implement our new approach to assist our mentally ill clients; and
- Lessons our agency has drawn that may be of use to others serving people with mental illness.

It is important to begin by describing the people who have motivated us to take this step: Our clients.

Clients desperate for medical help

A schizophrenic woman charged with a crime tells her public defender she wants to commit suicide. The attorney makes a referral to a social services agency overwhelmed

with phone calls from people seeking treatment. The client is briefly hospitalized. Upon release it becomes clear she is slipping through the cracks, but all of her lawyer's attempts to locate further treatment fail. Social service staff in the public defender's office resort to frequent calls of encouragement and support to the client while continuing the search for help. One Friday evening, though, the client pulls over to the side of the interstate, places a gun in her mouth and pulls the trigger. Fortunately, she lives; and the public defender is left wondering how to prevent tragedies like this from happening again.

Clients unnecessarily routed to prison

Jamie was a 16-year-old boy who lived with his mother and younger brother in a city housing project. He had a history of mental evaluations, as well as a string of charges including his latest: a non-physical assault on his younger brother. Although he never touched his brother, he broke a locked door to their apartment and threatened to hurt him. Jamie's lawyer found four psychological exams over 8 years from three different states each making the same mental health diagnosis and recommending the same treatment. But Jamie was never treated. Jamie's father reported talking to his employer about Jamie's behavior problems and being told Jamie could access treatment through their insurance program. As a result, Jamie attended counseling for several months before the insurance ran out and the services were terminated. Despite his lawyer's argument that with treatment Jamie could remain in his family and community, the court sentenced Jamie to confinement until he is 18. During these two years he will not be treated for his condition.

Clients making it

Robert is in his early 30's. When he came to the attention of the courts, Robert was hearing voices and at times believed himself to be someone else, problems his family said had appeared years earlier. They had attempted on a number of occasions to obtain psychological evaluations but were told they could not afford it. Even after his arrest, for a driving violation and giving false information to an officer, no one seemed interested in helping define the obvious problem. Robert came to CLO attention when a family member learned the public defender had added a social services component. After weeks of being turned down by service providers due to lack of insurance Robert finally obtained an assessment and learned his condition had worsened to the point of requiring a brief stay in the local mental hospital, after which he was released with medication and an appointment for outpatient treatment with a local mental health provider. One year later, Robert remains on his medication. He no longer hears voices and appears to be stable.

Each of these clients presents the Knox County Community Law Office with unique challenges, new terrain for our lawyers and social services staff, which have prompted us to expand our office's role. And representing clients with mental illness, as well as other health and social concerns, has made us take a hard look at what it means to "represent" people in criminal proceedings. While we continue to provide top-notch legal representation for our clients, we also believe representation means providing clients support in tackling the broader issues they face that contribute to their involvement in the system. As the needs of our clients have shifted, so has our role in representing them.

II. Shifting the Defender's Role in Greater Service of the Client

A. A Traditional Start

Mark Stephens, the public defender for Knox County, describes our agency's mission this way:

> *While I acknowledge the necessity for law enforcement in maintaining an orderly society, it is my job to make sure that people charged with crimes are availed of all of their constitutional rights to due process of the law. My clients are charged with crimes and the law says that as long as I make sure they get fair and effective representation, then I have done my job. However, I believe there is more to it than that. While I have a duty to my clients and their rights within the system, I believe that my obligation to my clients extends further than the court of law. It extends to the client as a whole; moreover, it extends to the community as a whole.*

This is a relatively new approach for us. Traditionally public defender organizations have focused solely on providing the highest quality legal defense for indigent people accused of a crime. Our office opened in 1990, after Stephens was elected as the district public defender for the Sixth Judicial District, Knox County, Tennessee. Our small staff of seven assistant public defenders, three secretaries, and one public investigator set out to provide the best defense possible. Within fourteen months, however, the office was handling far too many cases. Facing an ethical dilemma over whether clients could be competently represented if the office continued to take on new clients, the public defender requested that the local judiciary stop appointing cases to the office. He believed the relief was necessary until the caseload ratios became acceptable again or until the necessary resources were allocated that would allow the office to represent more clients competently.

Judges agreed, and began appointing new cases to members of the Knoxville Bar. The appointments to the private bar created an immediate groundswell of local support for more public defender resources, even drawing national attention and a New York Times front-page article. In 1992, the legislature responded by increasing not only our staff but also the staffs of other public defenders throughout the state. The Knox County office doubled in size, increasing assistant public defender positions to a total of fourteen.

In this spirit of positive institutional change, the office pressed for more improvements to increase the quality of representation for indigent defendants. For example we sought funding mechanisms designed to maintain parity between county resources that flowed to the prosecutor's office and the defender's office that passed through the State and county legislative assemblies. Modest fees ($12.50) assessed against anyone convicted of a criminal offense (except traffic offenses) were introduced to increase the ability of our office to build our staff. These alternative means of funding have now increased the size of the office almost fivefold.

These early battles to fund our agency adequately set the stage. Now, our goal is to develop our client's legal defense in a more holistic and efficient manner. For years we watched clients cycling in and out of the criminal justice system. We craved long-term, lasting solutions to the issues plaguing them, solutions that would keep them from returning to us. We longed to serve clients like Robert, Jaime, and others who would probably be back in the criminal justice system without an intervention addressing their mental health problems as well as their legal problems. Our search for answers prompted us to re-think our role. We challenged ourselves to consider how best to offer meaningful and dignified assistance and quickly realized that addressing a client's social needs and fulfilling one's ethical, professional legal responsibilities are the same obligation, a marriage of moral imperatives. Thus, we embarked on a venture to expand the traditional role of public defense; a role that at its core includes providing the client with quality, zealous legal representation, but can also mean empowering clients to fulfill life goals and dreams.

B. Redefining Our Organization to Provide More for Clients

As we set out to redefine our organization, many things were happening in Knox County that undermined our clients and their communities:

- Funding reductions resulted in the closing of county mental health facilities and reduction in treatment;
- Cost of drug and alcohol treatment skyrocketed;
- Medical care, generally, increased in cost;
- New funding restrictions made it difficult for a range of social service programs to help those needing services; and
- A growing number of individuals struggled to make a "living wage."

The Community Law Office opened its doors in December 2000 with the goal of stepping up to meet some of the needs created by these converging factors. Our CLO staff is concerned first and foremost with providing the best possible legal defense to indigent clients. We also seek to:

- Reduce recidivism,
- Empower clients,
- Increase positive community involvement in the criminal justice system,
- Prevent crime, and
- Demonstrate this more expansive defender model works.

Even more broadly the CLO seeks to:

- Strengthen families,
- Build support systems in the community,
- Provide prevention programs, and
- Advocate for programs needed to meet community needs.

In creating the CLO our public defender recognized that in-house social services were critical. He hired me to build and direct the social services program. Together, the

public defender, others in the office, and I began developing a plan, an organizational strategy, which continues to guide us.

The Social Services Program we offer clients is voluntary. Every client is given the opportunity to participate, but no one is required to. Initially all referrals to CLO's social services staff came from assistant public defenders. But after a bulletin board was set up in the front office, clients began seeking us our on their own. A variety of other sources began referring people to us as well, including mental health centers and private attorneys. Inmates, for example, have called to say "I need a job when I'm released and my cellmate told me you could help." Once clients make contact with CLO social services staff they are offered an opportunity to go through a full assessment to identify areas in their lives that are holding them back from success. In July 2001 we received our first grant and hired an Assessment Coordinator and a Vocational Coordinator. One year later we added a support staff person. From July 2001-June 2003 we averaged 500 referrals per each twelve months. Last July we added a Youth Coordinator and part-time youth assistant. Currently our __-person team operates under seven grants ranging from $950- $125,000.

C. Integrating Social Services into Representation

Our agency's new approach to indigent defense has three main components:

- Recognition of the full person
- Opportunity to address legal, medical, and social problems
- On-going support for former clients and the broader community

First, from the moment they enter our offices we view our clients as individuals with a range of concerns and aspirations. Generally our clients seek social services when overwhelmed by an issue. It may be a housing or transportation issue or a need to obtain services for a child. Or, an individual may come to a critical realization – for example that he does not want to remain dependent on drugs any longer.

Second, after developing a relationship with our clients we work with those who are interested to chart a plan to reach their goals. Client input is critical. Our clients' number one priority is the first item in the plan. Once the plan is in place, we assist the client in accessing resources as well as follow-up through the CLO. If we can help clients with their primary concern, they are very receptive to identifying other concerns and improving other aspects of their lives. In addition to treatment, we assist clients with obtaining valid ID's or driver's licenses, housing, transportation, job placement, educational assistance, and medical assistance. We provide clients opportunities to learn skills such as budgeting, time management and parenting as well as to enjoy local arts, cultural and sporting events. The CLO staff and clients participate in community service activities that offer a sense of belonging and an opportunity to contribute to the community. While clients may not immediately accept our offer for extra-legal assistance, a growing number call in a month or a year to ask whether the offer still open.

Third, we remain a resource for former clients even when we are not handling a legal matter for them. Members of the community who are not clients and never will be may also come to us for help. If an individual or agency contacts our office for help in identifying resources for treatment, we share all information we have regarding relevant service agencies. If the request comes from someone unable to access the services on his or her own, we make every effort to assist.

Our colleagues in criminal justice and the broader Knox County community have reacted positively to our change in approach. Most notably, the Knox County District Attorney General is a supporter of the Public Defender's efforts to intervene and address underlying problems that cause people to engage in crime. "One reason I've tried to fight more and more jails is we're not getting to the root of the cause of crimes. While no one knows for sure how successful the social-services component will be, there is general excitement for it."[iv]

III. CLO Addressing Client Mental Health Needs

For the past 10-15 years drug and alcohol abuse appeared to be the most pressing treatment issues for our clients. However, with the closing of our mental health hospitals and decreased funding for mental health treatment, the number of clients in need of mental health treatment has become overwhelming. Most of our attorneys now know where an individual can obtain treatment if she has an addiction. But what about the client who is schizophrenic or bi-polar? What about the client who presents both an addiction and mental illness? What about the mentally ill client who is self medicating and homeless? CLO's social services staff is educating CLO attorneys and the broader Knox County Community about how to deal with these situations as well.

A. Tennessee's Shift of Resources, and People, from One System to Another

As the numbers offered at the start of this paper suggest, in Tennessee there is twice as much funding for corrections as for mental health services. Individuals coming into the criminal justice system have traditionally been assessed and offered mental health services only after becoming so enmeshed in the system that it becomes difficult for them to emerge from it and move on to a successful life.

The limited resources that are available for services simply fail to produce positive results. In 1986 an individual could access 4-6 weeks of inpatient drug and alcohol treatment followed by long-term outpatient care. Mental health counseling was ongoing. Medical care was accessible. Service providers worked together for the good of the client and the community. Ten years later the state saw the closing of its mental health facilities and a sharp reduction of funding to aid those with mental illnesses. Within two years there were 1,890 inmates in our county jails with mental health diagnoses. At this point, it is worth noting that the initial plan for closing mental hospitals included providing intensive case management for those released into the

community, a recommendation encouraged recently by the President's New Freedom Commission on Mental Health. Under the New Freedom commission's proposal, the mentally ill would work to develop a plan to include housing, jobs, and social interaction in the community. However funding for intensive case management never materialized, leaving people with out any effective treatment options. The result was rising jail and court costs. The taxpayer now pays for corrections services instead of mental health services. Without treatment, the vicious cycle for people with mental illness with continue, as will the cost of incarceration.

B. Developing Coordinated Solutions to the Problem

1. At the State Level

State and county costs for providing care and services once people are in our detention facilities are staggering. According to a recently funded grant application for technical assistance prepared by the Knox County Government as part of its Mental Health Initiative, "[m]entally ill individuals who are under prescribed psychiatric medications place an economic burden of $122 per person per day (jail costs + medication) on the jail operating budget. One hundred forty-two persons were housed in the jail on August 28, 2003 and prescribed psychiatric medications resulting in a daily cost of $17,324. It should be noted that the most intensive mental health treatment programs, and most successful, operate at a daily per person cost under $40."

As early as 1999 the Tennessee Department of Mental Health and Mental Retardation faced a new challenge when they received a survey of county jails in Tennessee showing the large number of incarcerated people with mental illness. Survey results were alarming enough to prompt the state to establish a statewide task force. Participants included representatives from the mental health field, public defenders, consumers, law enforcement, corrections, district attorneys, and judges. Validating CLO's approach, the task force suggested that public defenders were the "criminal justice component best situated to coordinate efforts to provide meaningful, effective community linkage. Successful community linkage is a critical step toward reducing recidivism of this population."

One of the task force's most useful innovations was establishment of regional mental health liaisons who are now responsible for coordinating and facilitating the activities between the criminal justice and mental health systems. The Mental Health/Criminal Justice Liaison is responsible for implementing and maintaining joint activities between the criminal justice and mental health service systems of Tennessee. The liaisons work with the seven regional mental health planning councils to develop relationships between the criminal justice and mental health systems on the local level.

If we have a client in the jail who has a mental illness and needs services, we refer that client to our liaison and she sees the client, makes an assessment and recommends an appropriate placement. Once that is done and our attorneys tell us to proceed, she assists us in getting the appropriate referrals and placements. She will follow up with the client

to see that medications are available and the plan is working. We work very closely with her on these cases.

The breakdown still comes, however, due to the lack of services in the mental health system. Today the number of mentally ill and dual diagnosis clients in the criminal justice system continues to rise.

2. At the Local Level

Closer to home, CLO is building partnerships with local mental health providers. Last fall, we hosted a free workshop sponsored by the Mental Health Association of East Tennessee and the Mental Illness Awareness Coalition. The workshop, titled "Justice For Parents With Mental Illness And Their Invisible Children," was designed to increase understanding of the needs of parents with mental illness, their children and the legal responsibilities of the justice system. Panel members included an attorney, mental health clinical supervisor, case manager, juvenile court judge, and two consumers. While all the information presented was very informative, it was a mother and her adult daughter (the two consumers) who had the most impact. Their stories challenged the way each of us approaches our clients with mental illness. The mother talked about being in court and hearing her attorney talk about his "mentally ill client" as if that was 'who' she was. Her daughter talked about the fear and confusion that escalated when she became involved in the court system. Everyone on the panel agreed that mistakes are made most often because those in the justice system do not understand mental illness. To foster that understanding in our office we are currently in the process of providing monthly training sessions on mental health issues for our staff.

In addition, at the request of the Mental Health Association, our County Mayor convened a group to explore the problem and possible solutions to the growing number of mentally ill in the criminal justice system in our county. This group has now met three times. The first meeting resulted in the proposal mentioned above for a technical assistance grant, which was funded. With that grant, we will explore options and develop a plan that is most likely to work in our community. We are currently waiting to hear when the site visit will take place. At the group's most recent meeting the various "systems" came together to identify and discuss concerns, barriers, and recommendations for diverting the mentally ill from incarceration. The group has subdivided into smaller units to discuss appropriate criteria that may be used in diverting people with mental illness from jail. One of those units, the Criminal Justice group, included the public defender, the attorney general, a judge, and a law enforcement officer. They recommended diverting non-violent felony offenders by using a point system based on diagnosis, past treatment, medications, symptoms and previous hospitalization. Others would be given specialized attention in court with the assistance of mental health professionals. They recommended establishing appropriate sanctions with incarceration being the last option. Other concerns discussed by the various groups included the need for a continuum of services including medication, housing, jobs, and case management, and the critical need for discharge and transition planning for those being released.

Finally, the CLO is developing an additional strategy for better understanding and dealing with mentally ill clients. This year the first in a series of mental health cross trainings took place. Mental health professionals are providing training for CLO staff including attorneys, social services, investigators and support staff, while the CLO is providing training regarding procedures in the justice system to mental health providers. At the same time the CLO is looking for ways to advocate for more treatment resources. While these resources will not eliminate the number of people with mental illness in the system, we certainly hope it will reduce their number.

IV. Lessons from the CLO Experience

Our efforts to assist clients with mental health issues are ongoing and evolving. But already we have learned five key lessons about mental health and systemic collaboration.

1. It takes a combined effort to bring about change. While our roles in the system are varied, the ultimate goals are the same. Mental health and criminal justice agencies want our clients to be successful and the community to be safe. It is not as difficult as we might imagine to find common ground and a basis for adapting the system for better results. We can do this without compromising our ethical responsibilities. The local mental health initiative demonstrates collaboration works. The district attorney, the public defender, law enforcement and a judge agreed on criteria that could be used for deciding who to divert from the system.

2. The more each system/agency understands about each other the more likely it is that problems can be resolved. Why do individuals who have been hospitalized for 10 days on medication become stabilized only to become dysfunctional shortly after release? Hospital staff, we learn, prescribe the highest quality drugs and therefore the most expensive drugs for that problem. Once released, the client cannot afford the same medication. More affordable medication does not work as well, producing negative consequences for the client. Once everyone understands, systems can start working on how to solve this problem. In our case, the initiative has contacted drug companies and now has a representative exploring how the same formula for medication could be used in all our systems.

3. We cannot use the excuse "that is not my job." For the traditional public defender, legal representation was the sole focus. It remains CLD's primary focus. But clients are in the justice system for myriad reasons. They have addictions, mental illnesses, are homeless or lack education. By addressing a broad range of client needs, CLD is helping clients improve their lives and stay out of the system altogether.

4. It is imperative that we listen to the needs and concerns of the client and the community. Too frequently we believe we know what clients need and arrange services without fully understanding the concerns they are dealing with. We must talk to our clients about their needs. Until we address their issues, we cannot help them improve their lives.

5. We must EARN the trust of the systems/agencies, community and clients we work with and serve. If we do not follow through on our commitments we cannot expect to be successful. Our message needs to be loud and clear that we want to be part of the solution and are willing to do our part to make things better.

---

[i] Bureau of Justice Statistics, Press Release: Mental Health and Treatment of Inmates and Probationers (July 11, 1999) (on file with the author).

[ii] Sita Diehl and Elizabeth Hiland, *A Survey of County Jails in Tennessee: Four Years Later, available at* http://www.state.tn.us/mental/omd/CrimAdultmi.pdf.

[iii] Judy Reagan, MD and Ann Alderson, BS, *The Criminalization of Adults with Mental Illness* (Feb. 2003), *available at* http://www.state.tn.us/mental/publications/jailsurveyreport.pdf. The authors report "many of the mentally ill who were discharged from state run psychiatric hospitals either refused or forgot to take their medications, but they did not meet criteria for involuntary commitment (imminent danger to self or others). As a result, jails and prisons became the only institutions available."

[iv] Georgiana Vines, *Initiative aims to fight root causes of crime,* Knoxville News-Sentinel (Apr. 2, 2003), page reference unavailable.