



Medical Director's Column

Community Forensic Psychiatry and a Focus on Houselessness

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In 2014, I had the privilege to serve as the President of AAPL. One of the activities that looms large as a requirement of that position is the delivery of the Presidential Address at the Annual Meeting. This is something a typical president spends a great deal of time contemplating and researching, until the day the talk is delivered.

The year I took the helm was no exception. I was serving in state government as the Massachusetts Department of Mental Health Assistant Commissioner of Forensic Services at that time, and my views of the systems surrounding people with serious mental illness were shifting.

From a state level vantage point, I saw daily reports of people in the mental health system struggling with arrests, victimization, medical and psychiatric hospitalizations as well as houselessness. We were working to build out an array of programs and services using the Sequential Intercept Model (SIM). (1) This model recognizes the overrepresentation of people with mental illness in the criminal system, and proposes alternative approaches along a series of criminal-legal decisions made at various points such as arrest, detention, court hearings, entry and release from jail or prison, as well as decisions made for individuals under probation or parole supervision. The idea is that by identifying those with mental illness one can intercept the process of penetration further into the criminal system. These intercept points can serve as gateways for appropriate individuals to be diverted out of the criminal process and into treatment, which

presumably would better meet the needs of the individuals and society, without compromising public safety.

With my daily experiences working with the SIM framework, my Presidential address started to flow. My thesis became helping to chart a course that would better serve individuals with mental illness and help divert them from criminal systems. (2) I also highlighted the need to educate AAPL members about the importance of understanding systems—and how they are financed—to help move the needle toward better results.

The SIM model was updated in 2017 with the addition of the crisis service continuum as “Intercept 0” to minimize the need for police involvement and reduce the likelihood of arrest. (3) Yet, we are still seeing too many people with mental illness, substance use disorders, and criminal involvement on the streets and in our nation’s jails, along with growing challenges with homelessness, local encampments, and a revolving door of difficult-to-engage populations.

With this as context, the US Supreme Court has granted *certiorari* to an appeal of an interesting case from the Ninth Circuit Court of Appeals, *Johnson v. City of Grants Pass* (4). The case examines homelessness and the criminal justice interface. It stems from a small community in southern Oregon. According to the Ninth Circuit’s opinion, the population of the city is 38,000, and somewhere between 50 and 600 people live in the city as homeless. There are not enough shelter beds in the city to accommodate all those people, and one can see homeless individuals sleeping in parks and on streets.

To stem the tide of homeless people on the streets, the city passed ordinances limiting the use of blankets, pillows and cardboard boxes if one is sleeping on the streets within city limits. Initial sanctions for violating the ordinances are civil fines, which if not paid may result in an “exclusion order,” barring them from city property. If an individual is found within city limits after receiving such an exclusion order, they may be prosecuted for criminal trespass.

In 2018, in a separate case before the Ninth Circuit, a three-judge panel held that it is a violation of the Eighth Amendment to impose criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter. (5)

Several weeks after the *Martin* decision, a putative class action complaint was filed against Grants Pass, arguing that many of the ordinances were unconstitutional. A class was certified of “involuntarily homeless” individuals. After a summary judgment in favor of the class for some of the issues, the case was further narrowed, and a permanent injunction against the City prohibiting enforcement of some of the ordinances against class members (with limits related to time and place) was issued. The City appealed, arguing that the class should not have been certified and the case should be considered moot. The Ninth Circuit affirmed the District Court’s ruling that under the Eighth Amendment the city cannot enforce anti-camping ordinances against homeless individuals for the “mere act of sleeping outside with rudimentary protection from the elements...when there is no other place in the City for them to go.” The court did not address purely civil infraction remedies, but did note that where the civil infractions ultimately lead to criminal punishment, then they can be construed under this Eighth Amendment claim. The US Supreme Court heard arguments in April 2024 as to whether this ruling will stand.

There is a great deal of concern about the direction of this case. For municipalities struggling with increasing numbers of homeless persons, remedies seem few and far between, and a ruling that curtails the criminalization option could be viewed as impeding the ability of cities to clear their streets. For advocates for individual rights, a ruling in favor of the city could result in broader criminalization of homelessness and a worsening problem by disrupting lives and arresting individuals, only to have them return to communities with less access to stable supports and housing due to their criminalization. Furthermore, a ruling in favor of the class members could help ensure solutions that are creative and avoid the heavy hammer of a criminal sanction. Either way, given the high proportion of houseless individuals with serious mental illness and substance use disorders, the ruling will be relevant to practicing forensic psychiatrists.

The criminalization of homelessness could create increased demand for forensic evaluations of individuals sanctioned for violating the types of city ordinances seen in this case. Additionally, forensic psychiatrists practicing in jails, community mental health or state settings may see more of these types of issues faced by their patients. The themes

about systems, diversion programs, and innovative models for funding services outlined in my Presidential address from 2014 remain relevant. To that end, this latest Supreme Court case is one to watch.

References:

1. Munetz MR, Griffin PA. Use of the Sequential Intercept Model as an approach to decriminalization of people with serious mental illness. *Psychiatr Serv.* 2006 Apr;57(4):544-9.
2. Pinals DA. Forensic services, public mental health policy, and financing: charting the course ahead. *J Am Acad Psychiatry Law.* 2014;42(1):7-19.
3. Abreu D, Parker TW, Noether CD, et al. Revising the paradigm for jail diversion for people with mental and substance use disorders: Intercept 0. *Behav Sci Law.* 2017 Sep;35(5-6):380-395.
4. *Johnson v. City of Grants Pass* 72 F.4th 868 (9th Cir. 2022)
5. *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018)