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2001 Presidential Address

Dr. Metzner: Class action litigation in correctional psychiatry

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The Boston AAPL meeting began on October 25 with the presidential address by Jeffrey L. Metzner MD, entitled "Class Action Litigation in Correctional Psychiatry." Dr. Metzner described the pathway that has led to our present level of care for our inmate patients. It shows the greatest progress has resulted from class action lawsuits regarding constitutional rights of inmates.

Over 2 million people are incarcerated in the US. About 67% are in prisons, the remainder in jails. In 1975, the incarcerated accounted for 0.1% of the US population. That figure is now 0.7%. Black males are the group with the highest lifetime incidence of incarceration, 28%.

In 1996, the operating budget of US prisons totaled $2.5 billion. Health care consumed 17% of that. Mental health care consumed 5-40% of the health care expenditures. The proportion of prison inmates with significant psychiatric illness is 8-19%. Another 15-20% of inmates require psychiatric treatment. The food expense was $2.96 per inmate. The health care expense was $6.54 per inmate. The health care expense for the average US citizen that year was $4.95. The health care system in prisons and jails is quite inefficient. One reason is that security concerns are a higher priority than health care. However, inmates are the only people in the nation who have a constitutional right to health care (Estelle v Gamble, 1976). In 1977, the court expanded that right to include mental health care (Bowring v Godwin).

These landmark cases clearly delineate the obligation to provide health care for inmates. However, class action lawsuits have been needed to force fulfillment of those obligations. In 1993, 40 states were under court orders to comply with those requirements of the law.

Prison conditions in the 1960's were, in general, wretched. Inmate labor made the prisons financially self-sufficient. The plantation model placed inmate trustees in charge of other inmates. Excessive force (brutality) was common. Separate but unequal facilities were common for the races. Prison practices denied free speech and religious practices.

Prison reform was based on the test case model, similar to the school desegregation movement. These test cases occurred, of course, in our adversarial legal system. This spawned a requirement for experts who could testify as to the standards of health care as well as areas such as discipline, access to legal services, and sanitation. The litigation also spawned the creation of professional standards by professional organizations such as the AMA, APA, and AAPL. Advocacy groups for prison reform had similar beginnings.

Some of the lawsuits were "sweetheart" suits, fostered by the prison administrators. The administrators saw such suits as a way to force the state to provide more resources for the prisons. In the prison systems in which lawsuits have occurred, greater resources are available than in other prisons.

The implementation model of reform has evolved from this series of lawsuits. This model creates distinct roles for experts in its different phases. The phases are liability, remedial, and implementation.

In the liability phase, experts identify the standards to be met. The prison standard is not the same as the community

standard. The prison standard is what *should be* available in the community.

In the remedial phase, experts evaluate data and create programs. But first, systems and personnel must be developed to accomplish these tasks. An example of a system is a medical records system. An example of a program is a suicide prevention program. This phase includes such tasks as planning space for programs, arranging for personnel to run the programs, and planning for inmate access to the programs.

The implementation phase is the largest and most expensive phase. In Dr. Metzner's opinion, adequate treatment programs will resolve 80% of the problems that prisons have with mentally ill inmates. The role of the forensic psychiatrist in this phase is tricky. It requires a delicate balance between monitoring and consultation functions. It requires the forensic psychiatrist to be, as an agent of the court, reasonable, straightforward, clear, and not self centered.

The standards for psychiatric care in prisons are evolving. A "supermax" facility, also called a segregation unit, is used for discipline or for dangerous inmates. Commonly inmates in such units are in solitary confinement for 23 hours per day. They experience social isolation, sensory deprivation, and confinement in small spaces. The seriously mentally ill do not commonly get better in such situations, and commonly do get worse in segregation. Dr. Metzner submits that the following procedures should be included in the standard of care for psychiatrists working in such units: 1) Screen inmates before they are placed in segregation; 2) Seriously mentally ill inmates should not be placed in segregation unless treatment programs and activities occur there; 3) Make rounds on *all* segregation inmates. Photos of a supermax group therapy setting were shown. It looks like 5 secure phone booths in a semi-circle facing the therapist.

The standards for the treatment of mentally ill inmates are evolving. One such standard is discharge planning. Whether the prison or the community mental health agency will do the discharge planning has not yet been resolved. The discharge plans will vary depending on how long the inmate has been in prison, the services available in the community, whether the inmate has a place to live in the community, his finances, etc. There is a question as to whether the prison should be responsible for giving an inmate a supply of medication upon his release.

In summary, class action suits have spurred improvements in the treatment of the incarcerated mentally ill. Psychiatrists have helped bring about those positive changes.

At the luncheon address later that day, Joel Dvoskin PhD spoke about the obligation of mental health professionals to improve the health care system to the advantage of the patients and society. He specifically cited Jeff Metzner as an example of a leader who has been instrumental in the improvement of mental health treatment for prison inmates.