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MENTAL HEALTH COURT

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Stephen V. Manley, Judge, Mental Health Treatment Court, Santa Clara County, California

Stephen V. Manley is a Superior Court judge in Santa Clara County. He has served on the bench for over 25 years. He was a founder of the Drug Treatment Court in Santa Clara County as well as the Santa Clara County Mental Health Treatment Court. In January 2005 he spoke with the Center for Court Innovation's Carolyn Turgeon about his work.

How do you view mental health courts and drug courts, and the relationship between them?

I was finding that drug courts excluded clients who were mentally ill or dually diagnosed, and had co-occurring disorders. Why? Because these defendants were too difficult to work with. This is years ago. And I said, well now we're taking the neediest people, the people most in need of structured treatment and all of our resources, and we're excluding them from drug courts, and this is wrong.

I've worked with mental health clients for years and I know our traditional method is to ignore them. We either cycle them through quickly or we give them long sentences. There's a stigma with the mentally ill that they are more dangerous, which is not true. Some are, some are not. They are, however, far more difficult to work with. It makes absolutely no sense in my view to warehouse someone who is mentally ill and release them into the community with no services, when we know they will be rearrested again and go right back into jail.

So I went to war with—or had discussions with—mental health [officials in my county] and we changed things. And now in my courthouse we have a whole mental health team. And we force mental health providers to take mentally ill clients who are criminal justice clients, most of whom are not charged with serious offenses.

In what ways are the drug courts and mental health courts different?

I think they have to be very separate courts. In a drug court we use incentives and sanctions to motivate clients. With the mentally ill it is totally different.

Sanctions, for example, do not work with a mentally ill person unless they have significance. So I very seldom use sanctions. This morning I had a client who is very challenged intellectually. To him, jail is a reward. He likes it. Homeless people like it in the winter. What good does it do me to put people in jail for a sanction when they don't even understand what I'm talking about?

So number one, you've got to change all the rules. That does not mean you don't use drug court principles. It doesn't mean that you do not use sanctions in the appropriate case. But it does mean you have to think it through and know that you're applying the sanctions to the right person.

Number two, you have to lower the bar of expectations. Our expectations in drug court are far too high for mentally ill people to meet. Eighty percent of mentally ill people are substance abusers. They substitute street drugs for mental health medication because they often find in the short run they work better. And they're also easier to get. I always look at what the presenting factor is that is making it impossible for a client to function in the community, and work on that first. Once

we get that going then we work on the substance abuse. And if we're working on the substance abuse, we're not working on total abstinence, we're working on reduction. With people with dementia, you can only expect so much.

I received a probation report yesterday that I thought was one of the funniest that I've received in a long time. It had two sentences. "The defendant appears to have a short attention span. He has missed all five of his drug tests." Mentally ill people don't remember! If you want to give them a drug test, give it to them immediately, when they're in the courtroom. Send them outside to the bathroom and have them drug tested, but don't expect them to remember three weeks from now that they were supposed to go see someone.

Success is small things: clients who are able to function, who learn how to take the bus, who learn to find a place to live that is somewhat permanent, who are able to get social security or their disability reinstated. I have different expectations and goals for every group of clients.

Do you think that any judge could work in a mental health court?

I do not believe that just any judge could walk in and preside over a mental health court. A judge has to be committed, very patient, and willing to accept criticism from clients. Because mentally ill people are very honest. They will tell you almost everything and they will tell you what is and isn't working and what they want—if you ever bother to listen to them. Trying to meet the needs of these clients is an incredible challenge. It takes a real team and that's why drug court principles work so well. There is no court that requires a more sophisticated and committed team than mental health.

We have, for example, mental health caseworkers in the courthouse every day, so when clients are decompensating on the street they can come here to get help. Now that isn't the way it should be. They should be able to go to a mental health clinic! But they don't exist and they don't welcome them and they close their cases. So we have to change the paradigm and that's what mental health court is really about: changing the whole way you approach the mentally ill in the courts.

What we fail to advocate or even recognize is that the mentally ill are a large percentage of our criminal justice population, our family population, and our dependency population. There are too many of them in our system because no one else wants them, and it's easier to put them in jail than to try to deal with them in the community.

The other problem is, there's such a stigma around mental illness that no one wants to reveal it. Therefore we often don't know what the problem is and we're treating it the wrong way. We treat it as a drug problem when it's really both a drug problem and a mental health problem. You've got to have very good assessments, treatment placements, and monitoring done by both mental health and drug and alcohol specialists. You have to make them work together, and that's where the judge can be an agent of change. This is the greatest barrier to success, other than resources: getting these two disciplines to work together. They're separate turfs, separate rules, separate processes, procedures, goals.

In mental health court you also have the issue of medication, which never comes up in a drug court. In a drug court the judge orders people to do things. With medications it's entirely different because, number one, in most states the law doesn't permit you to order people to take medications, and, number two, even if you could order it that doesn't mean they'll take them. You have to convince them to take medication because if you cannot stabilize a client you cannot put them back into the community. And so that takes very intense work by a whole lot of people.