

Case Study: Challenges and Solutions Representing Client with Mental Disabilities

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Mental Illness and the Criminal Legal System

- “Sometimes a person’s contact with law enforcement may be the first indicator of a mental illness. Because of the stigma attendant to a mental health diagnosis – coupled with the lack of access to mental health services in many communities, either as a result of geographic isolation, sparse population, and/or economic impoverishment – many individuals who have a mental disability have not been so diagnosed or treated. And many persons who are diagnosed as mentally ill have never had a full evaluation or screening.” *See* https://www.opd.wa.gov/documents/00805-2020_CDTA_MentIllTrtmtCt.pdf.

Client: D. Annarelli

- 40 y/o, bipolar disorder, traumatic brain injury (TBI)
- Childhood sexual abuse
- Suicide attempts, jumped from moving vehicle
- Very limited criminal history, none violent
- Sought assistance through Return to Freedom Project

Mental Disabilities

Bipolar Disorder

- Bipolar disorder creates unusual shifts in mood, energy, activity levels, and the ability to carry out day-to-day tasks. People with bipolar disorder experience moods ranging from periods of extremely “up,” elated, and energized behavior (known as manic episodes) to very sad, “down,” or hopeless periods (known as depressive episodes).

Traumatic Brain Injury

- Injury to brain that can change cognition and behavior, including irritability, disinhibition, temper flare-ups, aggression, cursing, lowered frustration tolerance, and inappropriate sexual behavior.

Offense Background

- Police responded to domestic disturbance at client's family home
- Client was yelling that everyone was trying to sabotage him, yelled at dog, fistfight with adult son, had been drinking, armed with shotgun
- Police shouted at client, drew guns, broke through front door of home, shots exchanged, police officer sustained flesh wounds / non-life-threatening
- Client held pretrial and sentenced to **20 years** for first ever violent offense (state guidelines called for 2-5 years)

Sentencing

- Client pleaded no contest (memory issues)
- Superficial medical testimony from family friend regarding TBI—no individualized assessment
- No in-depth mitigation using mental illness (no diagnosis)
- Defense counsel stated “no way to know” what caused the incident
- Judge said no evidence of mental health issues present in case! Likened client to “Timothy McVeigh...!”
- U.S. Supreme Court: mental illness is relevant mitigation at sentencing. *See Sears v. Upton*, 561 U.S. 945, 955 (2010); *Rompilla v. Beard*, 545 U.S. 374, 392 (2005).

Oklahoma City Bombing



Habeas

- Post-sentencing habeas filed, expert evaluated client, opined clear bipolar disorder manic episode and diminished capacity during offense
- Habeas denied in trial court (unsympathetic judge), said diagnosis and expert testimony would not have made a difference in part because sentencing judge noted the severity of crime and credibility issues (client claimed no memory of offense)

New Virginia Laws on Mental Disabilities

- Va. Code Crim. Proc. Ch. 16 § 19.2-271.6 (2021):

B. In any criminal case, evidence offered by the defendant concerning the defendant's mental condition at the time of the alleged offense, including expert testimony, is relevant, is not evidence concerning an ultimate issue of fact, and shall be admitted if such evidence (i) tends to show the defendant did not have the intent required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of evidence.

New law (Marcus-David Peters Act) also calls for crisis intervention teams for mental health crises.

Prison Experience

- Client adjusted poorly to jail/prison, started in solitary for several months pretrial due to suicide risk, a number of minor “nuisance” infractions (none violent), likely byproducts of mental disabilities (state “Corruption Center”)
- Refused psychiatric treatment (incl. meds) due to trust issues even though acknowledged illness
- Assaulted by other prisoners
- Modest programming/achievements in prison likely due to illness

Clemency

- Client sought clemency as “hail mary” five years into sentence
- Ineffective trial counsel, bad sentencing judge, mental health mitigation, new law, unfair sentence/disproportionality under guidelines, mistreatment in prison all raised
- Particular difficulties for individuals with mental disabilities in prison (disciplinary, programming, social interactions), plus suicide risk
- Client had very little programming /evidence of rehabilitation in prison and several (non-serious) infractions

What Happened/What Should Have Happened

What Happened

- No community intervention before crisis (childhood warning signs)
- Police escalation / standoff
- Ineffective mental health mitigation / no expert evaluation at sentencing
- No treatment in prison (prison has no record of SMI)

Should Have Happened

- Early detection and treatment
- Crisis intervention / de-escalation
- Thorough mental health evaluation and diminished capacity raised in plea negotiations and sentencing
- Mental health care in community, or (as last resort) prison

Lessons

- Effective advocacy in early stages of proceedings is critical for individuals with severe mental illness or other disabilities to reduce or eliminate prison term where they face even greater challenges and are likely to “underperform” peers without disabilities, creating further barriers to reentry
- Build a strong record of mental health issues/disabilities at plea and trial level—evaluations, expert and where applicable lay testimony (family members), including surrounding offense
- State prisons are a crapshoot w/r/t programming and care, but none offer a therapeutic environment needed for treatment – particularly harmful for clients with mental illness since stress often impacts them differently
- Provide client’s mental health records to prison for any treatment available, if possible have sentencing judge recommend mental health care (per client’s wishes)

Representing Clients with Mental Disabilities

- <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=9&Issue=23&ArticleID=25992>
- https://uj.s.sd.gov/uploads/docs/Mental_Illness_handbook.pdf
- https://www.opd.wa.gov/documents/00805-2020_CDTA_MentIllTrtmtCt.pdf

Information on Mental Disabilities

- [https://www.hopkinsmedicine.org/health/conditions-and-diseases/traumatic-brain-injury#:~:text=Traumatic%20brain%20injury%20\(TBI\)%20happens,that%20happen%20to%20the%20brain.](https://www.hopkinsmedicine.org/health/conditions-and-diseases/traumatic-brain-injury#:~:text=Traumatic%20brain%20injury%20(TBI)%20happens,that%20happen%20to%20the%20brain.)
- <https://www.who.int/news-room/fact-sheets/detail/mental-disorders>
- <https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions>